SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 40

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, ETC., PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12328

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

LANNOM MANUFACTURING COMPANY, Respondent

MOTION TO DISMISS—Filed October 23, 1954

Comes the Respondent, Lannom Manufacturing Company, and respectfully moves the Court to dismiss the petition for enforcement heretofore filed in this cause by Petitioner, National Labor Relations Board, upon the following grounds:

1. The petition as supplemented shows on its face that the charging union, International Fur and Leather Workers Union, at the time the Board issued the complaint, at the time of the hearing and continuously thereafter was not and is not in compliance with Section 159 (h) Title 29 U.S.C.A. because:

(a) At all times material Ben Gold, the president of the charging union, was affiliated with the communist party, that this fact was known to all the members of the Labor Board, as well as to the general membership of the charging union;

(b) Ben Gold has since been convicted of perjury for having filed a false affidavit with the Board;

(c) The Board and the general membership of the Union knew of the falsity of Gold's affidavit continuously from the time it was filed.

Wherefore, the Respondent respectfully moves the Court to dismiss the enforcement petition.

Judson Harwood, Attorney for Respondent, Lannom Manufacturing Company.

[fol. 2] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS—Filed October 30, 1954

Comes the International Fur and Leather Workers Union of the United States and Canada (hereinafter referred to as the Union) and respectfully moves this Court for leave to intervene in this proceeding or, in the alternative, for leave to file the annexed memorandum in opposition to respondent's motion to dismiss.

In support of such motion the Union shows as follows:

1. The Union is the charging party herein having filed the original charge with the Board on April 18, 1951.

2. The order which the Board seeks to enforce herein directs the respondent employer to (a) cease and desist from discouraging membership in the Union; (b) from interfering with the rights guaranteed to its employees by Section 7 of the Labor-Management Relations Act, 1947; (c) to reinstate certain of its employees, who are members of the Union, with back pay; and (d) to post a notice to the foregoing effect.

3. The respondent's motion to dismiss is predicated solely upon an alleged defect in the compliance status of [fols. 3-18] the Union under Section 9(h) of the Act. The Union has an immediate and direct interest in the preservation of such status and of its rights thereunder. Such interest is separate and in addition to the Board's interest in the vindication of the public right created by the Act.

4. For the reasons which appear in the annexed memorandum it is peculiarly appropriate in the circumstances of this case that the Union be permitted intervention, at least to the extent of protecting its rights under its compliance status.

5. The Board has informed the Union that it has no objection to its intervention.

Wherefore, it is respectfully requested that this motion be granted.

Dated: New York, October 28, 1954.

Harold I. Cammer, Attorney for the International Fur & Leather Workers Union of the United States and Canada, 9 East 40 Street, New York 16, New York.

Certificate of Service (omitted in printing)

[fol. 19] In the United States Court of Appeals for the Sixth Circuit

[Title omitted]

Supplement to Petition for Enforcement of an Order of the National Labor Relations Board—September 24, 1954

On September 10, 1954, the Board filed with this Court a petition in the customary form asking enforcement of the Board's order in the instant case. Respondent has indicated an intention to challenge the status of the charging union in this case with respect to the Union's compliance with the non-Communist affidavits required by Section 9 (h) of the Act. So that the pertinent facts relevant to the Union's compliance may be before the Court we herewith submit this supplement to the petition with the request that it be considered and made a part thereof.

1. The original charge instituting the proceeding in this case was filed by the International Fur and Leather Workers Union (herein called the Union) on April 18, 1951 and amended charges were filed on June 18, 1951, November 13, 1951 and February 18, 1952. The complaint issued February 27, 1952.

2. Beginning in August 1950 and annually thereafter the Union filed non-Communist affidavits executed by its officers pursuant to the provisions of Section 9 (h). These in-

cluded annual affidavits by Ben Gold, president of the Union. The first Gold affidavit, dated August 29, 1950, was filed on or about August 30, 1950. Subsequent affidavits of similar import were filed annually by Gold for subsequent years.

3. In reliance on these affidavits the Board deemed the Union to be in compliance with Section 9 (h) for the period following August 30, 1950, and including February 27, 1952, the date of the complaint.

[fol. 20] 4. On December 19, 1952, the Board—prompted by the refusal of Ben Gold and the officers of certain other unions to acknowledge, before the Federal Grand Jury in the Southern District of New York, the validity of the 9 (h) affidavits which they had filed under the Act—sent a questionnaire to these officers, including Gold, requesting them to reaffirm their affidavits. The charging union in this case and the other unions involved thereupon brought suit to enjoin the Board from conducting this inquiry on the ground that it was beyond the Board's authority under the Act. The District Court for the District of Columbia agreed with this contention, and, on February 6, 1953, entered a permanent injunction stopping the Board's inquiry. *United Electrical Workers, et al.* v. *Herzog,* et al., 110 F. Supp. 220. The Board appealed this order to the Court of Appeals for the District of Columbia Circuit, which on December 4, 1953, handed down its decision affirming the District Court. *Farmer, et al.* v. *United Electrical Workers, et al.*, 211 F. 2d 36, certiorari denied, 347 U. S. 943 (April 12, 1954). The Court of Appeals in essence held that the falsity of an officer's 9 (h) affidavit had no effect on the Union's compliance status under the Act, at least until the Union membership became aware of such falsity.

5. In the meantime, on or about August 28, 1953, an indictment under 18 U. S. C. 1001 was returned against the Union's president Ben Gold, in the District Court for the District of Columbia, charging that the 9 (h) affidavit which he had filed with the Board on August 30, 1950 was false. Prompted by this indictment and those which had been returned against other officers, the Board, on October 23, 1953, announced that where a Union officer had been indicted for falsifying 9 (h) affidavits, the Board would defer the issuance of any new representation certifications to his

union, pending the outcome of the criminal proceeding. The Union thereupon obtained from the District Court for the District of Columbia a preliminary injunction which declared this policy invalid and enjoined its effectuation. *Fur Workers* v. *Farmer,* 117 F. Supp. 35, certiorari denied, 347 U. S. 943 (along with *Farmer* v. *U. E., supra*), appeal dismissed as moot by the Court of Appeals for the District of Columbia Circuit, July 2, 1954 .

6. Finally, on April 30, 1954, the criminal proceeding against Ben Gold for having falsified his 9 (h) affidavit of [fol. 21] August 1950 culminated in his conviction. On May 28, 1954, the Board, after previously notifying the union of this occurrence and giving it an opportunity to show cause why, unless it removed Gold from office, it should not lose its compliance status under the Act, entered an order declaring the Union ineligible to receive further benefits under the Act. The Union thereupon obtained from the District Court for the District of Columbia a preliminary injunction precluding the Board from altering or restricting the union's compliance status under the Act by reason of Gold's conviction. *Fur Workers Union* v. *Farmer,* 34 LRRM 2493, July 20, 1954. The Board has appealed this injunction to the Court of Appeals for the District of Columbia Circuit, but on September 9, 1954, that Court denied the Board's request for a stay thereof pending disposition of the appeal.

7. Pursuant to the obligation imposed by the several decisions of the District of Columbia courts cited in paragraphs 4-6 above, the Board filed its petition for enforcement in the instant proceeding. This supplement to the petition is intended to complete the record with respect to the compliance status of the charging union, and copies are being served upon that union as well as on respondent.

Respectfully submitted, A. Norman Somers, Assistant General Counsel, National Labor Relations Board.

September —, 1954.

[fol. 22] PORTIONS OF TRANSCRIPT OF RECORD RELIED UPON BY RESPONDENT

Mr. Harwood: If the Examiner please, Mr. Hamilton has very kindly consented to a stipulation that will save the Examiner a lot of time and save the Respondent not only time but expense. The Respondent is prepared to offer as a witness, A. H. Raskin, a Reporter for the New York Times, who if called to testify would testify in substance that Mr. Ben Gold, the President of the charging union, the International Fur and Leather Workers Union, has been a member of the communist party, was a member of the communist party for some 25 years and that he readily admitted this in his testimony before a Committee in Congress and during that testimony which was in September 1948, Mr. Gold stated, not only admitted that he was a communist but stated that he would never surrender his communist beliefs and that on or about June 30, 1950, the International Fur and Leather Workers Union, through its central council, or whatever it may be, instructed all of its officers to sign non-communist affidavits in order to comply with the Taft Hartley Act. Mr. Gold on or about August 28, 1950, signed such an affidavit, but at the time he signed it, he made a press release, wherein he stated that his action "was taken for the purpose of technical compliance with the Taft Hartley Law and that it did not involve any renunciation of his belief in communist principals."

A Mr. Irving Potash, at the meeting in June 1950, declined to surrender his card as a member of the communist party and prior to that time had been a vice president of this union, and his activities were to supervise and in fact run and control the New York Furriers Joint Board. Rather than surrender his communist party, at that meeting he gave up his title of vice-president, but that he retained his same job and performed the same duties; that he had been performing prior to giving up his title as a vice president; and this witness will further testify that Mr. Gold, since August 28, 1950, on at least one occasion, had actually attended a meeting of a group of known communists in New York City. This witness is a newspaper reporter and he is available to testify.

Now, I understand that Mr. Hamilton has agreed to stipu-

late that he would so testify, but does not agree, of course, [fols. 23-48] as to the facts and he is objection to the relevancy and competency of the testimony if actually offered. Now, is that stipulation correct?

Mr. Hamilton: That is correct. General Counsel is willing to stipulate that if this witness were called he would testify as outlined by Mr. Harwood, but by entering into the stipulation General Counsel is not waiving any objections which he would and does make as to the materiality, relevancy and competency, admissibility and anything else on this testimony.

Mr. Harwood: I would like to supplement one thing and say that Mr. Irving Potash who was referred to in the stipulation was one of the 11 communists who was a defendant in the rather notorious trial before Judge Medina and was convicted and is now serving time in the penitentiary.

Trial Examiner Wilson: All right. That stipulation will be received.

* * * * * * *

Mr. Harwood: . . . I would like to go one step further and I believe it will be agreeable—that the Board in making these determinations and considering this matter had available the press release by Mr. Gold at the time he executed his affidavit as I have stated. Since this matter was published in the newspapers throughout the United States and was given wide publicity.

Mr. Hamilton: Well, I can't stipulate for sure that that is so. I am reasonably certain that it was, because it was a matter of great publicity at the time.

Mr. Harwood: Well, you will stipulate then that it was published widely throughout the United States and went out over various press service wires to the newspapers.

Mr. Hamilton: I will so stipulate.

[fol. 49] EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL FUR AND LEATHER WORKERS UNION OF UNITED STATES AND CANADA, Plaintiff,

v.

GUY FARMER, et al., as Members of and Constituting the National Labor Relations Board, Defendants

PRELIMINARY INJUNCTION

Civil Action No. 2656-54

(Filed July 23, 1954, Harry M. Hull, Clerk)

Pursuant to the findings of fact and conclusions of law made herein, it is by the Court this 23rd day of July, 1954.

Ordered, that the defendants, Guy Farmer, Abe Murdock, Ivar H. Peterson, Philip Ray Rogers, and Albert C. Beeson, constituting the National Labor Relations Board, their successors in office, and their officers, agents, servants, employees, attorneys, and all persons in active concert and participation with them, be, and they hereby are, pending the determination and disposition of this action, enjoined from:

a. Keeping in effect the Determination and Order, issued by the Board on May 28, 1954, and more fully described in the complaint and in the findings of fact herein;

b. Revoking, suspending or restricting the compliance status of the plaintiff, International Fur and Leather Workers Union of United States and Canada, or any of its affiliate or constituent units, under Section 9 (h) of the National Labor Relations Act, as amended, by reason of the conviction of plaintiff's president, Ben Gold, on charges of filing of a false affidavit under that section;

c. Deny the plaintiff or any of its affiliate or constituent units any of the benefits of the Act or access to the [fol. 50] Board's processes by reason of the conviction of Gold, including denials of the right to participate in rep-

resentation proceedings before the Board, the right to participate in elections conducted by the Board for the purpose of determining collective bargaining representatives, the right to be certified as representative of employees for collective-bargaining purposes, the right to enter into or enforce union-shop provisions in collective-bargaining agreements, and the right to have the Board process charges of unfair labor practices;

d. Taking or refusing to take any action on account of said conviction of Ben Gold.

It Is Further Ordered, that the defendants' motion to dismiss the complaint be, and it hereby is, denied.

(S.) Edward A. Tamm, Judge.

[fol. 51] EXHIBIT E

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL FUR AND LEATHER WORKERS UNION OF UNITED STATES AND CANADA, Plaintiff,

v.

GUY FARMER, et al., as Members of and Constituting the National Labor Relations Board, Defendants

Civil Action No. 2656-54

(Filed July 23, 1954, Harry M. Hull, Clerk)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard on plaintiff's motion for a preliminary injunction and on defendants' motion to dismiss the complaint. The Court having heard counsel for the parties and having considered their memoranda, does this 23rd day of July, 1954, make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The plaintiff, the International Fur & Leather Workers Union of United States and Canada, is a voluntary,

unincorporated labor organization engaged in bargaining for and in behalf of its members with respect to their wages, hours and conditions of employment.

2. The defendants, Guy Farmer, Abe Murdock, Ivar H. Peterson, Philip Ray Rogers, and Albert C. Beeson constitute the National Labor Relations Board (hereinafter called the Board), which is a government agency created by the National Labor Relations Act of 1935, as amended (hereinafter called the Act.) The principal place of business and office of the Board is in the District of Columbia.

3. In August, 1950, and annually thereafter in 1951, 1952, and 1953, the plaintiff duly filed with the Board the requisite registration statements, financial data and non-Communist affidavits and certificates of union officers as [fol. 52] required by Section 9(f), (g) and (h) of the Act.

4. On April 30, 1954, a judgment of conviction was entered in this Court against Ben Gold, the president of plaintiff, on an indictment which charged that an affidavit filed by him pursuant to Section 9(h) of the Act in August, 1950, was false, a verdict of guilty having previously been returned by a jury.

5. On April 20, 1954, the Board issued to the plaintiff a notice to show cause why the Board should not deem the plaintiff not to be in compliance with section 9(h) of the Act, by reason of the verdict of guilty against Gold, and why the Board should not withhold all further benefits under the Act from the plaintiff and its affiliate and constituent units unless satisfactory proof was submitted that Gold had been removed from office and was not performing the functions or duties of any office in the plaintiff.

6. Thereafter, the biennial convention of the plaintiff re-elected Gold as President of the plaintiff.

7. On May 11, 1954, Gold as the re-elected president of the plaintiff, duly executed and duly filed with the Board the affidavit required by section 9(h) of the Act, upon the form provided by the Board for such purpose.

8. On May 17, 1954, the plaintiff filed with the Board its return to the aforesaid notice to show cause. Therein plaintiff asserted that the Board had no power to deprive the plaintiff of its compliance status under the Act by reason of the aforementioned conviction of Gold.

9. On May 28, 1954, the Board issued a Determination and Order, wherein it determined and ordered as follows:

"1. Good cause has not been shown why, by reason of the union's failure to remove Ben Gold from office after knowledge of his conviction, the Board should not declare the union not to be in compliance with Section 9(h) of the Act:

"2. The compliance letter issued to International Fur & Leather Workers Union of United States and Canada on June 11, 1953, is of no further force and effect and said union is not now in compliance with the requirements of Section 9(h) of the Act.

[fol. 53] "The Board further determines, in view of Ben Gold's conviction, that the affidavit executed by him on May 11, 1954, and submitted to the Board for filing for a further 12-month compliance period shall be, and it hereby is, rejected in the interests of protecting the integrity of the Board's processes and of effectuating the policies and purposes of Section 9(h) of the Act.

"Now therefore it is hereby ordered that no further benefits under the Act be accorded to the said International Fur & Leather Workers Union of the United States and Canada or to any of its affiliates or constituent units until said union has complied with the requirements of Section 9(h) of the Act."

10. By virtue of said Determination and Order, the Board has denied, and is denying, to plaintiff and to each of its constituent and affiliate units the right to participate in representation proceedings before the Board, the right to participate in elections conducted by the Board for the purpose of determining collective bargaining representatives, the right to be certified as representatives of employees for collective bargaining purposes, the right to enter into or enforce union-shop provisions in collective-bargaining agreements, the right to have the Board process their charges of unfair labor practices, and in general has deprived the plaintiff and its constituent and affiliate units of access to the processes of the Board and the rights and privileges provided by the Act.

11. The aforesaid Determination and Order and the actions of the Board taken pursuant thereto are causing the plaintiff irreparable injury and, unless enjoined, will continue to cause the plaintiff irreparable injury by depriving it and its constituent and affiliate units of access to the rights and privileges provided by the Act.

Conclusions of Law

1. The Court has jurisdiction in the premises.
2. The Board has no authority to revoke or restrict the compliance status of a union under the Act by reason of the conviction of an officer of a union for filing a false affidavit under Section 9(h) of the Act, and particularly where, as here, the conviction was based upon an affidavit filed more [fols. 54-64] than one year before the Board's action and which, therefore, is not relevant to the union's current compliance status.
3. The aforesaid Determination and Order of the Board of May 28, 1954 is illegal, null and void.
4. Unless enjoined, the actions of the defendants will cause the plaintiff irreparable injury. Plaintiff has no adequate remedy at law, and it has exhausted its administrative remedies.
5. Plaintiff's motion for a preliminary injunction should be granted, and the defendants' motion to dismiss the complaint should be denied.

(S.) Edward A. Tamm, Judge.

[fol. 65] In United States Court of Appeals

Order Sustaining Motion to Dismiss—Filed October 6, 1955

On Petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the motion of respondent to dismiss the petition for enforcement, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the said motion be and is hereby sustained.

[fol. 66] UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12328

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

LANNOM MANUFACTURING COMPANY, Respondent

On Petition for Enforcement of an Order of the National Labor Relations Board

OPINION—October 6, 1955

Before Simons, Chief Judge; Miller and Stewart, Circuit Judges

MILLER, Circuit Judge. The National Labor Relations Board has filed a petition seeking enforcement of its unfair labor practice order heretofore issued against the respondent, Lannom Manufacturing Company. The respondent employer has moved to dismiss the petition. The case is before us on the motion only, not on the merits.

In support of its motion, the respondent alleges that the charging union, International Fur and Leather Workers' Union, at the time the Board issued the complaint and continuously thereafter, was not in compliance with Sec. 159(h), Title 29, U. S. Code, which requires the filing of non-Communist affidavits, because Ben Gold, its president, was at all times material affiliated with the Communist Party, that his affidavit to the contrary was false, and that he had been convicted of perjury for having filed such false affidavit with the Board.

The Board was advised after filing its petition for enforcement that respondent intended to challenge the compliance status of the charging union, and in order to have the pertinent facts before the Court, filed a supplemental petition for enforcement, to which the motion to dismiss was subsequently directed, setting out the following facts, about which there is no dispute.

[fol. 67] The original charge instituting the proceeding in this case was filed by the International Fur and Leather

Workers' Union on April 18, 1951. The complaint issued February 27, 1952.

Beginning in August 1950 and annually thereafter the Union filed non-Communist affidavits executed by its officers pursuant to Section 9(h) of the Act, Sec. 159(h), Title 29, U. S. Code. These included annual affidavits of Ben Gold, president of the Union. The first Gold affidavit, dated August 29, 1950, was filed on or about August 30, 1950. In reliance on these affidavits the Board deemed the Union to be in compliance with Section 9(h) for the period following August 30, 1950, and including February 27, 1952, the date of the complaint.

On or about August 28, 1953, an indictment under Sec. 1001, Title 18, U. S. Code was returned against Gold in the District Court for the District of Columbia charging that the non-Communist affidavit which he had filed with the Board on August 30, 1950 was false. On April 30, 1954, this criminal proceeding culminated in his conviction. An appeal is now pending in the Court of Appeals.

Considerable litigation in the District of Columbia has arisen out of the foregoing situation, briefly summarized as follows:

On December 19, 1952, the Board called on Gold and certain officers of other unions for a reaffirmation of their affidavits previously filed in 1949 through 1952. This was prompted by a presentment handed up by a grand jury in the U. S. District Court for the Southern District of New York, which reported that a number of officers of unions had appeared before the grand jury, and while identifying the affidavits filed by them with the Board, had pleaded their constitutional privilege with respect to the truth or falsity of such affidavits. The unions brought suit in the District Court to enjoin the Board from conducting such an inquiry on the ground that it was beyond the Board's authority under the Act. The District Court upheld this contention and on January 27, 1953 issued the injunction. *United Electrical Workers, et al.* v. *Herzog, et al.*, 110 F. Supp. 220. The Court of Appeals affirmed. *Farmer, et al.* v. *United Electrical Workers, et al.*, 211 F. (2) 36, cert. denied, 347 U. S. 943.

Following the return of the indictment on August 28, 1953, the Board on October 23, 1953 promulgated a Statement

of Policy with respect to representation proceedings involving unions which had officers under indictment for [fol. 68] false non-Communist affidavits. The Statement of Policy provided for the withholding of certification of the union as bargaining representative pending the outcome of the indictment. Pursuant to the Statement of Policy the Board refused to process representation petitions of the International Fur and Leather Workers Union. The Union sought an injunction against the enforcement of the Statement of Policy and the District Court on November 19, 1953 issued a preliminary injunction to that effect. *International Fur & Leather Workers Union* v. *Farmer*, 117 F. Supp. 35. A stay pending appeal was denied by the Court of Appeals on December 4, 1953, which also on July 2, 1954 dismissed the appeal as moot because of the intervening conviction of Gold and the filing of another action, referred to below, based on the conviction of Gold instead of the indictment.

Following Gold's conviction on April 30, 1954, after which he was reelected as President of the Union, and following a show-cause order, the Board on May 28, 1954 issued a Determination and Order declaring its compliance letter to the Union on June 11, 1953 to be of no force and effect, that the Union was not in compliance, and that Gold's affidavit of May 11, 1954 submitted for a further twelve months compliance period be rejected "in the interests of protecting the integrity of the Board's processes and of effectuating the policies and purposes of Section 9(h) of the Act." The Union thereupon sought and on July 23, 1954 obtained from the District Court a preliminary injunction enjoining the Board from "Revoking, suspending or restricting the compliance status" of the Union and "Taking or refusing to take any action" by reason of Gold's conviction for having filed the false affidavit. Case unreported. On September 9, 1954 the Court of Appeals denied a stay pending appeal, and on February 15, 1955 affirmed the judgment of the District Court. *Farmer* v. *International Fur & Leather Workers Union*, 221 F. (2d) 862.

In the foregoing litigation the Court of Appeals for the District of Columbia has taken the position that the function of the Board with respect to the affidavits required by the Act are administrative only, with no authority to inquire as to the truth or falsity of the affidavits; that the Board has

no authority under the Act to deprive the Union of its compliance status under Sec. 9(h) if the affidavits have been filed; that the Act imposes a criminal penalty for filing a false affidavit which in the opinion of Congress was a suffi- [fol. 69] cient deterrent to false swearing by union officers; and that there is nothing in the Act or in its legislative history to indicate that Congress meant to go further and impose the drastic penalty of excluding a union from the Act's benefits because one of its officers filed a false affidavit, even though the membership of the union was aware of its falsity. See also: *Aerovox Corp.* v. *N. L. R. B.*, 211 F. (2d) 640, C. A. D. C.

As indicated by the foregoing recital of the actions of the Board, the Board does not agree with this construction of the Act. However, in view of the injunction issued against it it felt compelled to file the present enforcement proceeding. It has filed a Memorandum giving the Court the benefit of its view that this Court is empowered in this proceeding to decide that Gold's conviction invalidates the validity of the complaint. The International Fur and Leather Workers Union was granted leave to intervene and has filed a brief in opposition to the motion to dismiss.

We have heretofore indicated disagreement with the construction given to the Act by the foregoing cases. *N. L. R. B.* v. *Sharples Chemicals, Inc.*, 209 F. (2d) 645, 650, C. A. 6th; *N. L. R. B.* v. *Wiltse*, 188 F. (2d) 917, C. A. 6th. We held in those cases that a factual issue of compliance could not be raised and litigated by a respondent in an unfair labor practice proceeding, but expressed the view that authority to determine compliance or non-compliance on the part of the charging union existed in the Board and that such determination could be made by it through separate administrative proceedings. Reference was made in the *Sharples* case to the elaborate administrative structure established and used by the Board following the enactment of the Labor-Management Relations Act of 1947 for the purpose of determining prior to the issuance of a complaint that the charging union was in compliance; see also: *N. L. R. B.* v. *Greensboro Coca Cola Bottling Co.*, 180 F. (2d) 840, Note 1, p. 844, C. A. 4th; *Law* v. *N. L. R. B.*, 192 F. (2d) 236, 238, C. A. 10th; and to the recognition and apparent approval by the Supreme Court of such adminis-

trative proceedings. *N. L. R. B.* v. *Highland Park Manufacturing Co.*, 341 U. S. 322, at p. 325. The views expressed in *N. L. R. B.* v. *Sharples, supra,* have since received approval in *American Rubber Products Corp.* v. *N. L. R. B.*, 214 F. (2d) 47, 55, C. A. 7th, and *N. L. R. B.* v. *Vulcan Furniture Mfg. Corp.*, 214 F. (2d) 369, 371, C. A. 5th, cert. denied 348 U. S. 873. For the reasons stated in *N. L. R. B.* v. *Sharples Chemicals, Inc., supra,* and *N. L. R. B.* v. *Vulcan* [fol. 70] *Furniture Mfg. Corp., supra,* we adhere to the view heretofore expressed by us.

Where compliance involves a question of law arising out of established or undisputed facts, it appears settled that the Court in an enforcement proceeding has the authority to determine if the charging union is in compliance. *N. L. R. B.* v. *Highland Park Mfg. Co., supra,* 341 U. S. at p. 325-326. In that case the Supreme Court held that the Court of Appeals was right in overruling the Board and determining upon undisputed facts that the Board could not entertain the complaint, saying: "We think . . . that an issue of law of this kind, which goes to the heart of the validity of the proceedings on which the order is based, is open to inquiry by the courts when they are asked to lend their enforcement powers to an administrative tribunal."

In *N. L. R. B.* v. *Dant,* 344 U. S. 375, the legal effect of affidavits filed by union officers was successfully challenged in an enforcement proceeding in the Court of Appeals. Although the Supreme Court reversed the case on its merits, no question was raised about the authority of the Court to determine non-compliance where a factual question was not involved. Prior to these rulings by the Supreme Court, the Court of Appeals for the Fifth Circuit had indicated, without deciding, that if it was made to appear to it by clear and positive proof that the Board has taken jurisdiction of a charge by a union which has not complied with Sec. 9(h) of the Act, it would not enforce the Board's order. *N. L. R. B.* v. *Red Rock Co.*, 187 F. (2d) 76, 78, C. A. 5th, cert. denied, 341 U. S. 950.

In the present case, as the record now stands, there is no factual issue about the falsity of Gold's 1950 affidavit. A jury has so found. We see no reason why this Court can not, as a matter of law, give to that conviction the proper

legal effect which should follow from it. As stated in *N. L. R. B.* v. *Vulcan Furniture Mfg. Corp., supra,* what purports to be an affidavit is now merely a piece of paper evidencing false swearing. Certainly this Court is not required to blindly accept the form and ignore the realities. Irrespective of a possible lack of statutory authority in the Board, which is an administrative agency created by a statute and deriving its authority from that statute, to investigate the truth or falsity of affidavits filed with it, it would seem to be a fundamental principle that a court whose jurisdiction is invoked by a petitioner can consider the legal effect of undisputed facts placed before it in the [fol. 71] record in determining whether the petitioner is entitled to the relief sought. There is no doubt but that the legal effect of non-compliance with Sec. 9(h) of the Act is a bar to enforcement proceedings in the Courts. *N. L. R. B.* v. *Highland Park Mfg. Co., supra; N. L. R. B.* v. *Dant,* 344 U. S. 375; *N. L. R. B.* v. *Sharples Chemicals, Inc., supra,* 209 F. (2d) at p. 650, C. A. 6th. "It would be strange indeed if the courts were compelled to enforce without inquiry an order which could only result from proceedings that, under the admitted facts, the Board was forbidden to conduct." *N. L. R. B.* v. *Highland Park Mfg. Co., supra,* 341 U. S. at p. 325. Such authority in the court effectuates rather than obstructs the plain congressional purpose to "wholly eradicate and bar from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our government." *N. L. R. B.* v. *Highland Park Mfg. Co., supra,* 341 U. S. at p. 325. Nor does it conflict with the congressional purpose, referred to by us in *N. L. R. B.* v. *Wiltsie, supra* and *N. L. R. B.* v. *Sharples Chemicals, Inc., supra,* of confining the evidence in unfair labor practice proceedings to the merits of the case in order to avoid delays resulting from the trial of collateral issues and to enable the Board to carry out its real function of deciding unfair labor practice cases and determining bargaining representatives. No trial of such a collateral issue is here involved. In our opinion, as a matter of law, the 1950 affidavit of Gold and his subsequent conviction affirmatively show on the present record in this case a lack of compliance on the part of the charging union on August 30, 1950

and for such time thereafter as such conditions continued to exist.

The Union contends that since the present complaint was issued on February 27, 1952, compliance is not based on the August 30, 1950 affidavit, but on the affidavit of Gold filed a year later, approximately in August, 1951, and that there is no showing that the August 1951 affidavit is false. We find little merit in this contention, technical at its best. Compliance or non-compliance is based on whether Gold was a member of the Communist Party on February 27, 1952. It is an established fact that he was a member of the Communist Party on August 30, 1950. The nature and fundamental characteristics of the Communist Party have received considerable judicial consideration. In his separate opinion in *American Communications Association* v. *Douds*, 339 U. S. 382, Justice Jackson pointed out (p. 432) [fol. 72] the differences between the Communist Party and the major political parties in the United States, that membership in it is totally different from membership in the usual political party, and that *inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party.* He wrote: "the Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that the identification can only be made by officers of the Party who hold the code. Moreover, each pledges unconditional obedience to party authority. . . . For any deviation from the party line they are purged and excluded." See also similar expressions of views by Chief Justice Vinson, Justice Frankfurter and Justice Jackson in *Dennis* v. *United States*, 341 U. S. 494, at pages 498, 547 and 564 respectively. Chief Judge Simons of this Court has previously had occasion to call attention to these same characteristics. *Albertson* v. *Millard*, 106 F. Supp. 635, 643, E. D. Mich. In the absence of a showing to the contrary, the reasonable presumption would be a continuing membership in such an organization rather than a withdrawal from the membership ranks. Considering the falsity of the 1950 affidavit and the nature of the Communist Party, we do not regard the renewal affidavit in 1951, un-

supported by any alleged change in the factual situation, as a sufficient showing to the contrary. In *Hupman* v. *United States,* 219 F. (2d) 243, 248, C. A. 6th, we recognized the probability and possibility of a change of allegiance or affiliation on the part of a member of the Party, particularly if the proof of status is confined to a time remote from the date of the offense charged, but rejected the contention that membership in the Communist Party on a certain day could be proved only by evidence of what happened or transpired on that particular day.

It also appears that the Board, by its Determination an Order of May 28, 1954 found that the Union was not at that time in compliance with Sec. 9(h) of the Act. Although the District Court enjoined the Board from revoking the compliance status of the Union by reason of such finding, the injunction does not run against the respondent herein, who was not a party to that action, and does not render the present proceeding *res judicata. Postal Telegraph Cable Co.* v. *City of Newport,* 247 U. S. 464, 476; *Swetland* v. [fol. 73] *Curry,* 188 F. (2d) 841, 843. C. A. 6th. Nor do we believe that it prevents the respondent from taking the position in this Court that such a finding was made by the Board and urging upon us that we give to it the legal effect which in our opinion results therefrom, although respectfully differing from the legal conclusions reached in another circuit.

This case is complicated by the fact that an appeal on the part of Gold is pending in the Court of Appeals for the District of Columbia from the judgment of the District Court. It is indefinite when that litigation will end, considering the possibility of further proceedings in the Supreme Court in the event of affirmance, and the possibility of a new trial in the event of a reversal. We realize that the ultimate termination of the criminal proceedings in the District of Columbia may present a different factual situation from what is now before us, but consider it inadvisable to "freeze" this proceeding for an unreasonable length of time awaiting such termination, which would in the meantime prevent a possible review by the Supreme Court if so desired by one of the parties. We are accordingly ruling on the motion on the basis of the record as it presently stands.

Respondent's motion to dismiss the petition for enforcement is sustained.

STEWART, Circuit Judge, dissenting.

A court of competent jurisdiction has found that Gold's affidavit of August 30, 1950, was false. The critical date as to compliance with § 9(h) of the National Labor Relations Act as amended was the date of issuance of the Board's complaint. *N. L. R. B.* v. *Dant*, 344 U. S. 375. If the complaint had issued during the twelve month period that this false affidavit was in effect, the question before us would be clear cut. That, however, is not the case.

In August of 1951 Gold filed a new non-Communist affidavit, and it was during the effective period of that affidavit that the complaint in this case issued. No court has found that affidavit to be false. It is true that the Board found in 1954 that the Union was not at that time in compliance with § 9(h). Assuming the Board had power to make such a finding, and assuming further that it be considered a finding that the 1951 affidavit was false, it must, I should think, be supported, like any Board finding, by substantial evidence, considering the record as a whole. We have no such record before us. Indeed, it appears that the question [fol. 74] of the truth or falsity of the 1951 affidavit has never been heard on the merits.[1]

In *American Communications Assn.* v. *Douds*, 339 U. S. 382, 414, the opinion in chief, rejecting the claim that § 9(h) was a bill of attainder, emphasized that "members of those groups identified in § 9(h) are free to serve as union officers if at any time they renounce the allegiances which constituted a bar to signing the affidavit in the past. Past conduct, actual or threatened by their previous adherence to affiliations and beliefs mentioned in § 9(h), is not a bar to resumption of the position." The conclusion reached in the prevailing opinion seems to me to impose an improper limitation upon Chief Justice Vinson's language.

A jury has found that in 1950 Gold was both a Communist and a liar, to put it bluntly. Yet to indulge in the presumption that he was therefore guilty of committing

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[1] The Board has in effect been enjoined from holding such a hearing.

a criminal offense a year later in filing the 1951 affidavit is further than I can go on the record before us.

For the reasons outlined, I am unable to concur in the views of my colleagues, ably expressed by Judge Miller.

[fol. 75] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 76] UNITED STATES OF AMERICA, BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-1245

In the Matter of LANNOM MANUFACTURING COMPANY and INTERNATIONAL FUR & LEATHER WORKERS UNION

DECISION AND ORDER—March 20, 1953

On July 3, 1952, Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent and the Union filed exceptions to the Intermediate Report, and supporting briefs.

The Board [1] has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed.

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[1] Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel consisting of the undersigned Board Members.

The rulings are hereby affirmed.[2] The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case,[3] and hereby adopts the [fol. 77] findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions, additions and modifications:

1. We agree with the Trial Examiner's finding that the Respondent engaged in certain conversations which were violative of Section 8 (a) (1) of the Act. However, we find only the following portions of such conversations to be violative of Section 8 (a) (1): (a) Manager Parish's interrogation of employee Lavoy Hobbs as to how strong the Union was; (b) Parish's request of employee Farris to let him know if Farris found out anything about the Union organizational campaign; (c) Superintendent Waggoner's interrogation of employee Fletcher as to whether Fletcher was a Union man; and (d) Foreman Spencer's statement to employee Overman that the Union "could never organize this place because they'll start cutting production and laying off."

2. We disagree with the Trial Examiner's finding that employee Lavoy Hobbs had more seniority than employee Buford Cartwright. Cartwright began his employment before Hobbs. Hobbs was never laid off, and Cartwright was, but, as found by the Trial Examiner with respect to employee Steve Tucker, only a "quit", and not a layoff,

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[2] We affirm the Trial Examiner's denial of the Respondent's motion to dismiss the complaint on the ground that the Union was not in compliance with Section 9 (h) of the Act, and his rejection of evidence in support thereof. We are administratively satisfied that the Union was in compliance with Section 9 (h) at all times relevant hereto. See *American Cable & Radio Corporation*, 102 NLRB No. 99. See also *United Tanners, Inc.*, 103 NLRB No. 73.

[3] The request by the Union for oral argument is denied, because the record, exceptions, and briefs, in our opinion, adequately present the issues and the positions of the parties.

broke seniority under the Respondent's seniority rules.[4] Hobbs, therefore, was laid off in the February 14-16, 1951, layoff in accordance with the Respondent's seniority rules. Accordingly, we find, contrary to the Trial Examiner, that there is insufficient evidence to find that Hobbs' layoff was discriminatory, despite the fact that Hobbs was a known Union leader and also had refused Parish's request to assist the Respondent in influencing the employees against the Union.

3. We agree with the Trial Examiner's finding that the Respondent's layoff of employees Armstrong, Overman and Tucker in the February 14-16, 1951, layoff, admittedly in violation of the Respondent's seniority rules, was discriminatory. We disagree, however, with his finding that [9 or] 11 other employees were discriminatorily laid off at that time. The apparent ground for this finding is, in sub- [fol. 78] stance, that the Respondent, in the 3½ month period following the layoff, increased its staff by this number without regard to its seniority rules, thereby indicating that the layoff was a larger one than the economics of the situation warranted. We do not believe that this subsequent increase in the staff, which did not commence until March 19, and which was not completed until May 28, necessarily indicates that the layoff of February 14-16 was larger than necessary. We do agree, however, with the Trial Examiner's finding that the employees in question[5] should have been reemployed under the Respondent's seniority rules, and that the failure to so reemploy them was discriminatory, in violation of Section 8 (a) (3) of the Act.

We also, therefore, do not adopt the remedy recommended by the Trial Examiner with respect to these employees and the other employees who were not discriminated against in the February 14-16 layoff. Having found that the Respondent discriminatorily failed to reemploy

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[4] The record does not support the Trial Examiner's finding that Cartwright had either quit or been laid off; it rather shows that he was laid off.

[5] The record does not clearly establish either the number or the identity of these employees.

these employees after this layoff, we shall order the Respondent to offer immediate reinstatement to all employees laid off on February 14-16, 1951, who would have been reemployed thereafter if the Respondent had followed its customary departmental seniority policy, and make them whole for any loss of pay suffered by reason of the discrimination from the dates they would have been reemployed if the customary seniority policy had been followed to the dates of a proper offer of reinstatement, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289.[6]

[fol. 79] Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the Act, the National Labor Relations Board hereby orders that the Respondent, Lannom Manufacturing Company, Tullahoma, Tennessee, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Fur and Leather Workers Union by discriminating in regard to the hire or tenure of employment of its employees, or by discriminating in any other manner in regard to any term or condition of employment;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-

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[6] On March 16, 1951, the Respondent sent letters to 13 laid off employees, which stated that there might be a possibility of one or two days work per week, and invited these employees to call at the plant to discuss the matter at a specified date and hour. These letters can hardly be construed as offers of reinstatement to the 6 employees who received the letters too late to respond to the invitation, or to the 2 employees who responded but were refused reemployment. In any event, these letters only stated that there might be a *possibility* of reemployment, and they were, therefore, not proper offers of reinstatement to *any* of the recipients, so as to affect this order. See *Houston and North Texas Motor Freight Lines, Inc.*, 88 NLRB 1462.

organization, to form labor organizations, to join or assist International Fur and Leather Workers Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain therefrom, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to A. A. Overman, Steve Tucker, T. G. Armstrong, Harold Crosslin and Martie Ulmer immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of pay, which he may have suffered by reason of the discrimination against him in the manner provided in the section of the Intermediate Report entitled "The remedy";

(b) Offer to those employees listed on "Appendix A" attached hereto, who were laid off on February 14-16, 1951, and who would have been reemployed thereafter if the Respondent had followed its customary departmental seniority policy, immediate and full reinstatement to their former or substantially equivalent position without preju-
[fol. 80] dice to their seniority or other rights and privileges, and make each of them whole for any loss of pay suffered by reason of the discrimination against him, by payment to each of them of a sum of money equal to that which he would have earned as wages from the date he would have been reemployed if the customary seniority policy had been followed to the date of the offer of reinstatement, less his net earnings during such period;

(c) Post in conspicuous places at its Tullahoma, Tennessee, plant, in all places where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix B."[7] Copies of said notice, to be

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[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order."

furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Tenth Region in writing within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C. Mar. 20, 1953.

John M. Houston, Member, Abe Murdock, Member, Paul L. Styles, Member, National Labor Relations Board. (Seal.)

[fol. 81] APPENDIX A

Carl McPheron.	Louis Williams.
Lavoy Hobbs.	Sam Neal.
Coner Grant.	Ward Armstrong.
Dan Riddle.	Edward R. Mines.
Cleve Duke.	Fred Millramy.
Woodrow Hobbs.	Charles Fletcher.
Willard Farris.	Eugene Rackler.
James L. Webb.	James Haley.
Bobby J. Webb.	Howard Duke.

Frank Brown.

[fol. 82] APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not discourage membership in International Fur & Leather Workers Union by discriminating in regard to the hire or tenure of employment of our em-

ployees, or by discriminating in any other manner in regard to any term or condition of employment.

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Fur & Leather Workers Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may — affected by an agreement, requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

A. A. Overmann	Martie Ulmer
Steve Tucker	Harold Crosslin

T. G. Armstrong

We will offer to such of the employees named below as were discriminated against immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Carl McPheron	Louis Williams
Frank Brown	Sam Neal
Coner Grant	Ward Armstrong
Dan Riddle	Edward R. Mines
Cleve Duke	Fred Millramy
Woodrow Hobbs	Charles Fletcher
Willard Farris	Eugene Rackler
James L. Webb	James Haley
Bobby J. Webb	Howard Duke

Lavoy Hobbs

All our employees are free to become or remain members of the above named union or any other labor organization. [fol. 83] We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

Lannom Manufacturing Company (Employer), by —— —— (Representative) (Title).

Dated ——.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[fol. 84] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

LANNOM MANUFACTURING COMPANY, Respondent

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 141, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Lannom Manufacturing Company, Tullahoma, Tennessee, its officers, agents, successors and assigns. The proceedings resulting in said Order is known upon the records of the Board as "In the Matter of Lannom Manufacturing Company and International Fur & Leather Workers Union, Case No. 10-CA-1245."

In support of this petition the Board respectfully shows:

(1) Respondent is a Tennessee corporation engaged in business in the State of Tennessee, within this judicial cir-

cuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on March 20, 1953, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

[fols. 85-88] (3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board and requiring Respondent, its officers, agents, successors and assigns, to comply therewith.

(S.) A. Norman Somers, Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 8th day of September, 1954.

[fol. 89] Clerk's Certificate to foregoing transcript omitted in printing.

[fols 1-5] BEFORE THE NATIONAL LABOR RELATIONS BOARD, TENTH REGION

Case No. 10-CA-1245

In the Matter of LANNOM MANUFACTURING COMPANY and INTERNATIONAL FUR & LEATHER WORKERS UNION

Excerpts from Transcript of Proceedings

Court Room, Coffee County Courthouse, Manchester, Tennessee, Monday, March 17, 1952

Pursuant to notice, the above entitled matter came on for hearing at 10:00 a.m.

Before Thomas S. Wilson, Esq., Trial Examiner

APPEARANCES:

Frank E. Hamilton, Esq., 50—7th Street, N.E., Atlanta, Ga., appearing on behalf of the National Labor Relations Board.

Willie Helms, Post Office Box 889, Asheville, N.C., appearing on behalf of International Fur and Leather Workers Union, Petitioner.

Judson Harwood, Esq., Nashville Trust Building, Nashville, Tennessee, appearing on behalf of Lannom Manufacturing Company, Respondent.

[fol. 6] OFFERS IN EVIDENCE

Mr. Hamilton: At this time, I should like to have the reporter mark for identification as General Counsel's Exhibit 1A, Notice of Hearing in Case No. 10-CA-1245, dated February 27, 1952, and signed by John C. Getreu, Regional Director for the Tenth Regional office of the Board. Attached to the Notice of Hearing is a complaint in the matter of Lannom Manufacturing Company and International Fur and Leather Workers Union, Case No. 10-CA-1245, dated February 27, 1952, and signed by John C. Getreu, Regional Director for the Tenth Regional Office of the Board. Attached to the complaint is a charge filed April 18, 1951, by International Fur and Leather Workers Union, alleging that Lannom Tannery, West Lincoln Street, Tulla-

homa, Tennessee, had engaged in certain unfair labor practices. Also attached to the complaint is an amended charge. Incidentally, the charge filed April 18th, was docketed as Case No. 10-CA-1245. Also attached is an amended charge [fol. 7] filed with Tenth Regional Office of the Board on June 18, 1951, by International Fur and Leather Workers Union, alleging the commission of certain unfair labor practices by Lanmon Tannery, which charge was docketed as an amended charge in Case No. 10-CA-1245. Also attached is a charged filed with the Tenth Regional Office of the Board November 13, 1951, which charge was filed by International Fur and Leather Workers Union and alleged the commission of certain unfair labor practices by Lannom Manufacturing Company, which charge was docketed as a second amended charge in Case No. 10-CA-1245. Also attached is a charge filed February 18, 1952, by International Fur and Leather Workers Union alleging the commission of certain unfair labor practices by Lannom Manufacturing Company, which charge was docketed as a third amended charge in case No. 10-CA-1245;

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1A for identification.)

I should like to have the reporter mark for identification as General Counsel's Exhibit 1B, Affidavit of service by the Tenth Regional Office of the Board of a copy of General Counsel's Exhibit 1A on the parties. Attached to one B being registered mail return receipt cards, denoting receipt by the parties on February 28th and February 29, 1952.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1B for identification.)

[fol. 8] I should like to have the reporter mark for identification as General Counsel's Exhibit 1C, Affidavit of service by the Tenth Regional Office of the Board of a copy of the charge filed April 18, 1951. Attached to 1C being registered mail return receipt card denoting receipt of a copy of the charge by the company on April 21, 1951;

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1C for identification.)

I should like to have the Reporter mark for identification as General Counsel's Exhibit 1D, Affidavit of service by the Tenth Regional Office of the Board of a copy of the charge in Case 10-Ca-1245, filed June 18, 1951. Attached to General Counsel's Exhibit 1D is a registered mail return receipt card denoting receipt by the Respondent on June 21, 1951.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1D for identification.)

I should like to have the reporter mark for identification as General's Counsel's Exhibit 1E, Affidavit of Service by the Tenth Regional Office of the Board of a copy of the Second Amended Charge in Case 10-Ca-1245, which was filed with the Tenth Regional Office of the Board, on the Respondent, attached to 1E being a registered mail return receipt card denoting receipt by Lannom Manufacturing Company on November 16, 1951;

[fol. 9] (Thereupon the document above referred to was marked General Counsel's Exhibit No. 1E for identification.)

I should like to have the reporter mark for identification as General Counsel's Exhibit 1F, Affidavit of Service of a copy of the third Amended Charge in Case No. 10-CA-1245 by the Tenth Regional Office of the Board upon the Respondent, attached to 1F being a registered mail return receipt card denoting receipt by the Company on February 23, 1952:

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1F for identification.)

I should like to have the reporter mark for identification as General Counsel's Exhibit 2, the Answer of Lannom Manufacturing Company, in the matter of Case No. 10-CA-1245, which Answer is signed and verified by Judson Harwood as Attorney for Lannom Manufacturing Company, and was received by the Tenth Regional Office of the Board on March 12, 1952. Proper service and receipt is hereby acknowledged.

(Thereupon the document above -ferred to was marked General Counsel's Exhibit No. 2 for identification.)

Trial Examiner Wilson: Any objections?
Mr. Harwood: No objections.
Trial Examiner Wilson: They will be admitted.
Mr. Hamilton: I will offer them now, sir.
[fols. 10-50] Trial Examiner Wilson: All right. I am sorry I got ahead of you. They will be received.

(General Counsel's Exhibits 1A through 1F and 2 were received in evidence.)

[fol. 51] STIPULATION OF COUNSEL

Mr. Harwood: If the Examiner please, Mr. Hamilton has [fol. 52] very kindly consented to a stipulation that will save the Examiner a lot of time and save the Respondent not only time but expense. The Respondent is prepared to offer as a witness, A. H. Raskin, a Reporter for the New York Times, who if called to testify would testify in substance that Mr. Ben Gold, the President of the charging union, the International Fur and Leather Workers Union, has been a member of the communist party, was a member of the communist party for some 25 years and that he readily admitted this in his testimony before a Committee in Congress and during that testimony which was in September 1948, Mr. Gold stated, not only admitted that he was a communist but stated that he would never surrender his communist beliefs and that on or about June 30, 1950, the International Fur and Leather Workers Union, through its central council, or whatever it may be, instructed all of its officers to sign non-communist affidavits in order to comply with the Taft Hartley Act. Mr. Gold on or about August 28, 1950, signed such an affidavit, but at the time he signed it, he made a press release, wherein he stated that his action "was taken for the purpose of technical compliance with the Taft Hartley Law and that it did not involve any renunciation of his belief in communist principals."

A Mr. Irving Potash, at the meeting in June 1950, declined to surrender his card as a member of the communist party and prior to that time had been a vice president of this union, and his activities were to supervise and in fact run

[fol. 53] and control the New York Furriers Joint Board. Rather than surrender his communist party —, at that meeting he gave up his title of vice-president, but that he retained his same job and performed the same duties; that he had been performing prior to giving up his title as a vice president; and this witness will further testify that Mr. Gold, since August 28, 1950, on at least one occasion, had actually attended a meeting of a group of known communists in New York City. This witness is a newspaper reporter and he is available to testify.

Now, I understand that Mr. Hamilton has agreed to stipulate that he would so testify, but does not agree, of course, as to the facts and he is objection to the relevancy and materiality and competency of the testimony if actually offered. Now, is that stipulation correct?

Mr. Hamilton: That is correct. General Counsel is willing to stipulate that if this witness were called, he would testify as outlined by Mr. Harwood, but by entering into the stipulation General Counsel is not waiving any objections which he would and does make as to the materiality, relevancy and competency, admissibility and anything else on this testimony.

Mr. Harwood: I would like to supplement one thing and say that Mr. Irving Potash who was referred to in the stipulation was one of the 11 communists who was a defendant in the rather notorious trial before Judge Medina and was [fol. 54] convicted and is now serving time in the penitentiary.

Trial Examiner Wilson: All right. That stipulation will be received.

[fol. 55] STIPULATION OF COUNSEL

Trial Examiner Wilson: The hearing will be in order. Proceed Mr. Hamilton.

Mr. Hamilton: It is my understanding from a discussion with Mr. Harwood that the witness who would testify if called as a witness is a Mr. Roskin or Raskin.

Mr. Harwood: Frankly, I don't know. Either R o s k i n or R a s k i n—I am not sure which.

Mr. Hamilton: Who is a writer for the New York Times. It is my further understanding that Mr. Harwood would like

to include in the stipulation that the Board at the time the Fur and Leather Workers Union filed the information required under Section 9(f), (g) and (h) of the Act, considered the things mentioned in the earlier portion of the stipulation. I can not stipulate exactly what was before the Board at that time, but I will stipulate that the Board at the time the Fur and Leather Workers filed the required material, stated that the veracity or truth of the affidavit material was a matter for investigation by the Justice Department and not for investigation by the Board and that on the basis of the information which was filed, the Board administratively determined the Fur and Leather Workers to be in compliance with the filing required. Is that satisfactory, sir.

[fols. 56-457] Mr. Harwood: That is satisfactory. I would like to go one step further and I believe it will be agreeable —that the Board in making these determinations and considering this matter had available the press release by Mr. Gold at the time he executed his affidavit as I have stated. Since this matter was published in the newspapers throughout the United States and was given wide publicity.

Mr. Hamilton: Well, I can't stipulate for sure that that is so. I am reasonably certain that it was, because it was a matter of great publicity at the time.

Mr. Harwood: Well, you will stipulate then that it was published widely throughout the United States and went out over various press service wires to the newspapers.

Mr. Hamilton: I will so stipulate. All of this, of course, is subject to the same reservation as to the earlier stipulation.

Mr. Harwood: It is so understood.

Trial Examiner Wilson: All right.

[fol. 458] EXAMINER'S RULING ON PROOF

Trial Examiner Wilson: I will call the hearing to order. I believe, Mr. Hamilton, that you rested except for certain Exhibits which will come in through the Respondent's testimony.

Mr. Hamilton: That is correct.

Mr. Harwood: At this time, Mr. Examiner, I would like to get clear in my mind your ruling on the proof with refer-

ence to the communists connection with this Union. It was offered as a stipulation and was objected to by Mr. Hamilton and I never did understand whether you sustained his objection and it was entered as an offer or proof or whether you over-ruled his objection and it is in the record officially.

Trial Examiner Wilson: I will sustain his objection and allow the stipulation to stand as an offer of proof.

[fol. 459] General Counsel's Exhibit 1-A

United States of America, Before the National Labor Relations Board, Tenth Region

"Defense"

Case No. 10-CA-1245

In the Matter of Lannom Manufacturing Company and International Fur & Leather Workers Union

Notice of Hearing

Please take notice that on the 17th day of March, 1952, at ten o'clock in the morning, at the Coffee County Courthouse, Manchester, Tenn. a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that, pursuant to section 102.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

In witness whereof the General Counsel of the National

Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed by the Regional Director for the Tenth Region on this 27th day of February, 1952.

John C. Getreu, Regional Director, National Labor Relations Board, 537 Peachtree-Seventh Bldg., Atlanta, Georgia.

[fol. 460] UNITED STATES OF AMERICA, BEFORE THE NATIONAL LABOR RELATIONS BOARD, TENTH REGION

Case No. 10-CA-1245

In the Matter of LANNOM MANUFACTURING COMPANY and INTERNATIONAL FUR & LEATHER WORKERS UNION

Complaint

It having been charged by International Fur & Leather Workers Union, herein called the Union, that the Lannom Manufacturing Company, herein called the Respondent, has engaged in, and is now engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, has caused the Regional Director for the Tenth Region of the Board, as agent for the Board, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15 to issue this Complaint and allege as follows:

1

The Respondent is a corporation organized under and existing by virtue of the laws of the State of Tennessee. It maintains an office and place of business at Tullahoma, Tennessee, where it is engaged in the business of manufacturing baseballs and operating a tannery.

2

The Respondent, in the course and conduct of its business operations annually sells finished products and semi-fin-

ished products valued at more than $50,000 to customers located outside the State of Tennessee.

[fol. 461] The Union is a labor organization within the meaning of Section 2 (5) of the Act.

4

The Respondent, on or about the date set forth by their respective names, discharged and thereafter failed and refused to reinstate its employees whose names are set forth below:

Carl McPheron	2-15-51	James L. Webb	2-15-51
Harold Crosslin	2-26-51	Bobby J. Webb	2-15-51
A. A. Overman	2-15-51	Lois Williams	2-15-51
Coner Grant	2-15-51	Sam Neal	2-15-51
Dan Riddle	2-15-51	Ward Armstrong	2-15-51
Lavoy Hobbs	2-15-51	Edward R. Mines	2-15-51
Sally Blackburn	3-23-51	Fred Millramy	2-15-51
Steve Tucker	2-15-51	Charles Fletcher	2-15-51
Cleve Duke	2-15-51	Eugene Rackler	2-15-51
Woodrow Hobbs	2-15-51	James Haley	2-15-51
Willard Farris	2-15-51	Howard Duke	2-15-51
Coleste Lowe	3-14-51	Norma Gunn	3-15-51
Martis Ulmer	3-28-51	Annie B. Blackburn	3-19-51

5

The Respondent discharged the employees named in paragraph 4 above, and thereafter failed and refused to reinstate them because of their membership in and activities on behalf of the Union, and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

6

The Respondent, by and through its officers and agents whose names are set forth below, on or about the respective dates set forth by the names of each, interrogated its employees about their union membership, sympathies, activities and desires:

Office Manager W. F. Robertson, Feb. 7 & March 7, 1951.

Manager & Treasurer Chas. E. Parrish, Feb. 2 & 14 & March 21, 1951.

Tannery Superintendent Felix Waggoner, Oct. 20, 1950, & Feb. 2, 13, 16 & 22 and March 2 & 7, 1951.

Ball Plant Supt. John Walters, Feb. 14, 1951.

[fol. 462] 7

The Respondent, by and through its officers and agents, whose names are set forth below, on or about the respective dates set forth by the name of each, threatened its employees with economic reprisals if they became or remained members of or assisted the Union:

Tannery Supt. Felix Waggoner, Feb. 1, 2, 22 & 28 and March 23, 1951.

Manager & Treasurer Chas. E. Parrish, Feb. 2 and March 16 & 21, 1951.

Ball Plant Supt. John Walters, March 16, 1951.

Office Manager W. F. Robertson, Feb. 28 and March 23, 1951.

Foreman H. L. Spencer, Feb. 7, 1951.

Everett Hodge, March 16, 1951.

8

The Respondent, by and through its officers and agents, whose names are set forth below, on or about the respective dates set forth by the name of each, promised economic benefits to induce its employees to refrain from joining, assisting or remaining members of the Union:

Tannery Supt. Felix Waggoner, Feb. 1 & 16 & March 2, 1951.

Manager & Treasurer Chas. E. Parrish, Feb. 3 & 14, 1951.

Ball Plant Supt. John Walters, Feb. 3 & 14, 1951.

9

The Respondent, by and through its officers and agents, whose names are set forth below, on or about the respective dates set forth by the name of each, solicited employees to keep under surveillance, spy upon, and report on members, meetings and activities of the Union:

Office Manager W. F. Robertson, Feb. 7 & 28, 1951.

Manager & Treasurer Chas. E. Parrish, Feb. 3 & 14 and March 7, 1951.

Tannery Supt. Felix Waggoner, Feb. 1, 3 & 14 and March 7, 1951.

10

The Respondent, on or about March 7, 1951, circulated and permitted to be circulated on company time and property an anti-union petition designed to ascertain the union sympathies of its employees, which petition was published on March 14, 1951, as a paid advertisement in the Tullahoma newspaper.

[fol. 463] 11

The Respondent, by the acts described in paragraphs 4 and 5 above, has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

12

The Respondent, by the acts described in paragraphs 4, 5, 6, 7, 8, 9, and 10 above, and by each of said acts, has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

13

The acts of the Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

Wherefore, on this 27th day of February, 1952, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused the Regional Director for the Tenth Region to issue this Complaint against Lannom Manufacturing Company, the Respondent herein.

John C. Getreu, Regional Director, Tenth Region, National Labor Relations Board, 537 Peachtree-Seventh Building, 50 Seventh Street, N.E., Atlanta, Georgia.

IMPORTANT—READ CAREFULLY

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 10-CA-1245 (10-CA-1205)

Date Filed April 18, 1951

Compliance Status Checked By: E.E.D. 8-10-51 E.T.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: Lannom Tannery

NUMBER OF WORKERS EMPLOYED: 150

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State): West Lincoln St., Tullahoma, Tennessee

NATURE OF EMPLOYER'S BUSINESS: tanning & make base balls

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Employer, in order to discourage membership in a labor organization, discriminated in regard to the hire and tenure of employment and to the terms and conditions of employment of the following named employees, on and after dates set opposite their names:

Carl McPherson	2-15-51	Lois Williams	2-15-51	Celeste Lowe	2-15-51
Harold Cresslin	2-15-51	Sam Neal	"	Norman Gunn	"
A. A. Overman	"	Wade Armstrong	"	Martie Ulmer	3-28-51
Coner Grant	"	Edward R. Miner	"		
Dan Riddle	"	Fred L. Millramy	"		
Lavery Hobbs	"	Charles Fletcher	"		
Sallie Blackburn	"	Frank Brown	"		
Steve Tucker	"	Woodrow Hobbs	"		
T. G. Armstrong	"	James Haley	"		
James L. Webb	"	Willard Farris	"		
Bobby Joe Webb	"	Howard Duke	"		

Amek B. Graham 3-1-51

By these and other acts and conduct, the Employer interfered, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge

International Fur & Leather Workers Union

4. Address (Street and number, city, zone, and State): P.O. Box 889, Asheville, N. C.

Telephone No.: 2-4753

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

Independent

6. Address of National or International, if any (Street and number, city, zone, and State): International Fur & Leather Workers Union, 251-4th Ave., New York 10, N. Y.

Telephone No.: GRamercy 7-3401,2,3,4

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Willie Holmes
(Signature of representative or person filing charge)

4-16-1951
(Date)

Representative
(Title, if any)

43

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 10-CA-1245

Date Filed 6-18-51

Compliance Status Checked By: EED 8-10-51

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: Lannom Tannery

NUMBER OF WORKERS EMPLOYED: 150

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State): West Lincoln St., Tullahoma, Tennessee

NATURE OF EMPLOYER'S BUSINESS: tanning & make base balls

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Employer, in order to discourage membership in a labor organization, discriminated in regard to the hire and tenure of employment and to the terms and conditions of employment of the following named employees, on and after dates set opposite their names:

Carl McPherson	2-15-51	James L. Webb	2-15-51	Woodrow Hobbs	2-15-51
Harold Cresslin	"	Bobby Joe Webb	"	James Haley	"
A. A. Overman	"	Lois Williams	"	Willard Farris	"
Coner Grant	"	Sam Neal	"	Howard Duke	"
Dan Riddle	"	Wade Armstrong	"	Celeste Lowe	"
Lavory Hobbs	"	Edward R. Miner	"	Norman Gunn	"
Sallie Blackburn	"	Fred L. Millramy	"	Martie Ulmer	3-28-51
Steve Tucker	"	Charles Fletcher	"	Annie B. Blackburn	3-1-51
T. B. Armstrong	"	Frank Brown	"		

By these and other acts and conduct, the Employer interfered, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

JUN 22 1951

RECEIVED JUN 19 1951 NATIONAL LABOR RELATIONS BOARD Atlanta, Georgia

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: International Fur & Leather Workers Union

4. Address (Street and number, city, zone, and State): P.O. Box 889, Asheville, N. C. Telephone No.: 2-4753

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): Independent

6. Address of National or International, if any (Street and number, city, zone, and State): International Fur & Leather Workers Union, 251-4th Ave., New York 10, N. Y. Telephone No.: GRamercy 7-3401, 2, 3, 4

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John Russell (Signature of representative or person filing charge)

6/13/51 (Date) Dist. Director (Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

44

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 10-CA-1245

Date Filed 11-13-51

Compliance Status Checked By: FED 12-31-51

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: Lannom Manufacturing Company

NUMBER OF WORKERS EMPLOYED: 150

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State): West Lincoln St., Tullahoma, Tenn.

NATURE OF EMPLOYER'S BUSINESS: tanning hides and manufacturing baseballs

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Employer in order to discourage membership in a labor organization, discriminated in regard to the hire and tenure of employment and to the terms and conditions of employment of the following named employees, on and after the dates set opposite their names:

Carl McPheron	2-15-51	James L. Webb	2-15-51	Woodrow Hobbs	2-15-51
Harold Crosslin	2-28-51	Bobby J. Webb	"	James Haley	"
A.A. Overman	2-15-51	Lois Williams	"	Willard Farris	"
Coner Grant	"	Sam Neal	"	Howard Duke	"
Dan Riddle	"	Ward Armstrong	"	Celeste Lowe	3-14-51
Lavoy Hobbs	"	Edward R. Mines	"	Norma Gunn	3-15-51
Sally Blackburn	3-23-51	Fred Millramy	"	Martie Ulmer	3-28-51
Steve Tucker	2-15-51	Charles Fletcher	"	Annie B. Blackburn	3-19-51
T.G. Armstrong	"	Frank Brown	"		

By these and other acts and conduct, the Employer interfered, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

RECEIVED NOV 13 1951 NATIONAL LABOR RELATIONS BOARD Atlanta, Georgia

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: International Fur & Leather Workers Union

4. Address (Street and number, city, zone, and State): P.O. Box 829, Asheville, N.C.

Telephone No.: 24753

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): International Fur & Leather Workers Union

6. Address of National or International, if any (Street and number, city, zone, and State): 251-4th Ave., New York 10, N.Y.

Telephone No.: Gramercy 7-3401, 2, 3, 4

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John Russell (Signature of representative or person filing charge)

Nov. 8, 1951 (Date) District Director (Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

U. S. GOVERNMENT PRINTING OFFICE 16—57620-2

DO NOT WRITE IN THIS SPACE

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 10-CA-1245

Date Filed 2-18-52

Compliance Status Checked By: FED 3-30-52 DJ

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: Lennon Manufacturing Company

NUMBER OF WORKERS EMPLOYED: 150

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State): West Lincoln Street, Tullahoma, Tennessee

NATURE OF EMPLOYER'S BUSINESS: tanning hides and manufacturing baseballs

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Employer in order to discourage membership in a labor organization, discriminated in regard to the hire and tenure of employment and to the terms and conditions of employment of the following named employees, on and after the dates set opposite their names:

Carl McPherson	2-15-51	James L. Webb	2-15-51	Woodrow Hobbs	2-15-51
Harold Croselin	2-26-51	Bobby J. Webb	"	James Haley	"
A. A. Overman	2-15-51	Lois Williams	"	Willard Farris	"
Coner Grant	"	Sam Neal	"	Howard Duke	"
Dan Riddle	"	Ward Armstrong	"	Celeste Lowe	3-14-51
Lavey Hobbs	"	Edward R. Mines	"	Norma Gunn	3-15-51
Sally Blackburn	3-23-51	Fred Millsaay	"	Martie Ulmer	3-28-51
Steve Tucker	2-15-51	Charles Fletcher	"	Annie B.Blackburn	3-19-51
T.G.Armstrong	"	Frank Brown	"	Cleve Duke	2-15-51
				Eugene Rackler	"

By these and other acts and conduct, the Employer interfered with, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: International Fur & Leather Workers Union

FEB 18 1952

4. Address (Street and number, city, zone, and State): P. O. Box 889, Asheville, N. C.

Telephone No.: 24753

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): International Fur & Leather Workers Union

6. Address of National or International, if any (Street and number, city, zone, and State): 251 - 4th Avenue, New York 10, N. Y.

Telephone No.: Gramercy 7-3401, 2, 3, 4

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John Russell (Signature of representative or person filing charge)

Feb. 15, 1952 (Date)

District Director (Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

46

[fol. 468] GENERAL COUNSEL'S EXHIBIT 2

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD, TENTH REGION

Case No. 10-CA-1245

In the Matter of: LANNOM MANUFACTURING COMPANY and INTERNATIONAL FUR & LEATHER WORKERS UNION

Answer of Lannom Manufacturing Company

Lannom Manufacturing Company for answer to the Complaint heretofore filed against it in this cause, answering paragraph by paragraph, says:

I

Admitted.

II

Admitted.

III

Denied. It is also denied that said union has qualified under Section 9H of the Act and it is denied that the Board has authority to issue a complaint based upon a charge filed by said union.

IV

Denied.

V

Denied.

VI

Denied.

[fol. 469]

VII

Denied.

VIII

Denied.

IX

Denied.

X

Denied.

XI

Denied.

XII

Denied.

XIII

Denied.

Judson Harwood, Attorney for Lannom Manufacturing Company.

STATE OF TENNESSEE,
County of Davidson:

Personally appeared before me, Norma Jean Carlisle, a Notary Public in and for said County and State, Judson Harwood, with whom I am personally acquainted and who after first being duly sworn acknowledged himself to be the attorney for Lannom Manufacturing Company and as such attorney he was authorized to execute the foregoing answer for and on behalf of said Lannom Manufacturing Company, and that the matters and things set forth in said answer are true according to the best of his knowledge, information and belief.

Judson Harwood.

Subscribed and sworn to before me this the 11th day of March, 1952. Norma Jean Carlisle, Notary Public. My Com. Expires July 24, 1955. (Seal.)

[fol. 470] UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD, DIVISION OF TRIAL EXAMINERS

Washington, D. C.

Case No. 10-CA-1245

In the Matter of LANNOM MANUFACTURING COMPANY and INTERNATIONAL FUR & LEATHER WORKERS UNION

Frank E. Hamilton, Esq., and Charles M. Paschal, Esq., for the General Counsel.

Judson Harwood, Esq., of Nashville, Tenn., for the Respondent.

Willie Helms, of Asheville, N. C., for the Union.

Before: Thomas S. Wilson, Trial Examiner.

Intermediate Report

Statement of the Case

This matter arises upon a complaint dated February 27, 1952,[1] by the General Counsel,[2] of the National Labor Relations Board, herein called the General Counsel and the Board respectively, through the Regional Director for the 10th Region, (Atlanta, Georgia) against Lannom Manufacturing Company herein called the Respondent, which alleged, in substance, that the Respondent had in various enumerated ways since on or about February 1, 1951, interfered with, restrained, and coerced its employees and that since February 14, 1951, had discharged and thereafter refused to employ certain named employees because of their membership in and activities on behalf of the Union thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) 1 and (3) and Section 2 (6) and 7 of the Labor Management Relations Act in 1947, 61 Stat. 136 herein called the Act. The Respondent duly filed its answer admitting certain allegations of the Complaint but denying the commission of any unfair labor practices. Copies of the various charges, complaint, and notice of a hearing thereon were duly served upon the Respondent and the Union.

Pursuant to notice, a hearing was held between March 17, 1952 and March 27, 1952 at Manchester and Tullahoma, Tennesee, before the undersigned Trial Examiner. The [fol. 471] General Counsel, the Union and the Respondent were represented by counsel or representative. All parties participated in the hearing and were given full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to present oral argument and file briefs and proposed findings of fact or conclusions of law or both. The General Counsel and the

---

[1] The complaint is based upon an original charge filed April 18, 1951 and subsequently amended three times, the last being on February 18, 1952, by International Fur & Leather Workers Union, herein called the Union.

[2] This term specifically includes the counsel for the General Counsel appearing at the hearing.

Respondent argued orally at the conclusion of the hearing but neither filed a brief.

During the hearing the Respondent moved that the complaint herein be dismissed under Section 9 (f), (g) and (h) of the Act. The Respondent based this motion upon an offer of proof wherein, admitting that the Union was in technical compliance with the aforementioned sections of the Act, the Respondent offered to prove that Ben Gold, the Union president, had publicly stated after signing his affidavit that, while he had resigned from the Communist Party in order to comply with the Act, he was renouncing none of the principles he had previously held and further that Irving Potash had resigned his Union office of vice president rather than to abandon his admitted membership in the Communist Party but thereafter, despite his resignation, had continued to exercise all the functions of such Union office just as he had done prior thereto. From this the Respondent argued that such compliance was not in good faith and that the Board should therefore exercise its discretion by refusing to process charges filed by this Union. The motion was denied. Such alleged defects in fulfilling the requirements of the above sections of the Act are proveable in other forums.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of the Respondent

Lannom Manufacturing Company is a corporation organized under and existing by virtue of the laws of the State of Tennessee. It maintains an office and place of business at Tullahoma, Tennessee, where it is engaged in the business of manufacturing baseballs and operating a tannery. Respondent, in the course of its business operations annually sells finished products valued at more than $50,000 to customers located outside the State of Tennessee. Respondent admits, and the undersigned finds, that the Respondent is engaged in commerce in the meaning of the Act.

II. The labor organization involved

International Fur & Leather Workers Union is a labor organization admitting to membership employees of the Respondent.

III. The unfair labor practices

(a) Chronology of events

In December 1950, Willie Helms, an organizer for the Union, came to the City of Tullahoma, population about 10,600 persons, primarily to organize the employees of the new plant of the Wilson Athletic Goods Company in this city. About January 25, 1951, Helms extended his campaign by commencing an undercover attempt to organize the employees of the Respondent's tannery when he met with employees T. G. (Gregg) Armstrong, Steve Tucker and Martie Ulmer, each of whom signed a card applying for membership in the Union and authorizing the Union to bargain for him. Thereafter Armstrong assumed the leadership among the tannery employees in this attempt to establish the Union. Between that date and February 5, [fol. 472] 1951, 26 tannery employees and Sally Blackburn (employed in the baseball factory) signed similar cards for Helms and Armstrong.

In the meantime, on January 17, 1951, the National Production Authority (NPA) issued its order M-28 freezing certain types of leather and indicating that leather would soon be rationed because of the Korean crisis. On February 5, 1951, NPA followed this with its order M-35 which froze the sale of all hides until March 15, 1951, so as to accumulate a stock pile of hides with which to inaugurate the allocation system. The Respondent's quota of 1,300 hides per month, approximately 60 percent of its prequota consumption, became known on February 28, 1951.

On February 14-16, 1951, the Respondent suddenly and without warning gave notices of permanent layoff to 23 of its 51 tannery employees, 22 of whom had previously executed union authorization cards. After this layoff there remained in the Respondent's employ in the tannery only employees Harold Crosslin, Martie Ulmer, Buford Cart-

wright and J. C. Womack [3] who had executed similar cards. Thereafter the Respondent laid off Crosslin on February 26, 1951 nad Martie Ulmer on March 28, 1951 allegedly for engaging in fisticuffs in the plant as will be found hereinafter leaving thereafter only Cartwright and Womack.

Prior to March 4, 1951 when it appeared as a paid advertisement in the Tullahoma News with a list of the signatories thereto,[4] the following petition was circulated among the employees and supervisors of the Respondent for signature in both the tannery and the baseball plant during working hours:

> "Notice to I. F. L. W. Union
>
> We, the employees of Lannom Manufacturing Co., *Do Not* Want Your *Union,* so please stay away and let us work."

During the period of its circulation in the plant this petition was signed by 96 rank-and-file employees of the tannery and the baseball plant including Ulmer, Cartwright and Womack and by the five following supervisory officials of the Respondent: John Waller, superintendent of the baseball plant; Floyd Huskey, assistant shipping manager; Everett Hodge, foreman of the home sewing department; John Tucker, foreman of the sewing department of the plant; and by William Sanders, manager of the machine-sewed balls department.[5]

The above found facts constitute the skeleton on which the present case rests.[6] Further incidental, but revealing,

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[3] The 27th signer, of course, was Sally Blackburn.

[4] Who paid for the insertion of this petition in the Tullahoma News was not disclosed in the record except that it was not the Respondent.

[5] Despite the prevalence of names of high supervisory officials on the petition, Manager Parish, Office Manager Robertson and Tannery Superintendent Waggoner each denied having had any knowledge of this petition or of its circulation in the plant. Under the circumstances this testimony is hardly worthy of belief.

[6] The cases of Annie B. and Sally Blackburn are completely unrelated to the layoff in the tannery and thus will be considered separately herein.

[fol. 473] facts will be added to the above during the subsequent discussion of the contentions of the parties.

The General Counsel and the Union maintained that the layoff of February 14-16 during which, for the first time in the Respondent's history of similar layoffs, slips were marked "permanent"—not temporary—the layoff of Harold Crosslin on February 26 and that of Martie Ulmer were caused by the attempt being made at this time by the laid off individuals to organize the Union in the Respondent's tannery. These parties argued that this contention is proved by the coincidence in the time of the layoff with the organizational drive, by the fact that 24 of the 25 employees laid off from a staff of 51 had executed union cards and by the fact that, when the Respondent had completed its layoffs, only 2 of the 26 tannery employees who had executed union cards were retained as employees. They argue that this mortality of 92 percent or more among the union employees of the tannery when compared to a mortality of 8 percent or less among the almost equal number of nonunion tannery employees is itself cogent proof of a discriminator method of selection of personnel to be laid off based upon union membership. They argue that other incidents discussed hereafter make Respondent's motivation even clearer. They even argue that there was no economic reason for a layoff on February 14-16.

The Respondent on the contrary argues that: (1) the layoffs of February 14-16 and of Crosslin were due exclusively to economic factors beyond the Respondent's control and refer to the freeze on leather and the usual spring slowdown of sales of baseballs; (2) that, with only two exceptions, the layoff was accomplished in accordance with the principles of strict seniority; (3) that Ulmer was discharged for fighting in the plant; and (4) that the Respondent had no knowledge of any union activity until *after* the layoffs of February 14-16 and hence there could have been no discrimination based upon union membership. If true, the Respondent would appear to have an impregnable defense even as against the strong case presented by the General Counsel.

(b) Economic necessity for layoff

In Tullahoma, Respondent operates a tannery in conjunction with its baseball plant. Manager Parish testified that the tannery was merely a service division to supply the baseball plant with horse and cow hides necessary for the manufacture of baseballs. In view of the fact that admittedly 20-50 percent[7] of the leather tanned in the Respondent's tannery is not used in the manufacture of baseballs but instead is sold either to other divisions of the Respondent located elsewhere or to third parties and to the fact that the tannery tanned large quantities of sheepskins which are not usable in making baseballs and of heavy cowhide of which only a portion is used in baseballs except when better hides are unavailable, Parish's description appears to be overstated. The service record of the tannery employees also indicates from their long employment that they enjoyed long and continuous service interrupted only on rare occasions by temporary layoffs—never before permanent layoffs. Thus the seasonal fluctuation of the baseball sales had only slight effect upon the employment at the tannery as the tannery was not completely dependent upon the baseball factory for its business including, as it did, sheep hides and shoe welting. It is interesting to note that baseball production was at its peak for the year during February, 1951.

Nor does it appear that there was any lack of hides as of February 14-16 which would have necessitated the layoff [fol. 474] of that date for the Respondent had received deliveries of heavy purchases of hides during the month of January. Furthermore, Parish on February 12 gave a press interview in which he was correctly quoted as saying that the Respondent had stockpiled enough hides at that time to continue the baseball business for the ensuing year even though he anticipated the necessity of a reduction of 34-40 employees in the tannery "within thirty days." Thus it appears that the layoff of February 14-16 was not caused by any immediate leather shortage.

However, the Respondent's experience with hide rationing in World War II which reduced the Respondent's con-

[7] According to estimates of various Respondent witnesses.

sumption of hides 50 percent or more had required a sharp curtailment of the tannery staff at that time. So a similar curtailment could be anticipated in the tannery when it became known on February 28, 1951 that the Respondent's allocation of hides under NPA regulations was to be 1,300 hides per month, approximately a 40 percent reduction in consumption. The fewer hides to be tanned naturally the fewer employees needed.

In view of the uncertainties produced by the possibilities of the institution of the rationing system of hides, the undersigned believes that a cautious employer might well have laid off some employees in early January when the imposition of this rationing system became certain or that a careful employer might have waited until his particular quota had been made so that the layoff could have been made based upon fact rather than upon surmise and speculation. The facts would, therefore, appear to indicate that a layoff in the tannery was to be anticipated due to the current uncertainties in the tanning business. But the time selected by the Respondent for this layoff on February 14-16 would not seem to fit properly into the exigencies of the economic situation confronting the Respondent at that time.

Apparently Parish himself changed his mind as to the time of the layoff between the time of his Tullahoma News interview when it was to come "within 30 days" and February 14 when the layoff was actually put into effect. Why? However, the undersigned cannot substitute his business judgment for that of the Respondent at the time and, therefore, cannot find that this layoff at this time was unnecessary. Obviously the economic situation did have a bearing on the layoff. But the fact that there was economic justification for a reduction in force is not however necessarily dispositive of the issue of discrimination.[8]

(c) Lack of knowledge of Union Activities

Could the reduction in force at this time have been caused by the Respondent's learning of the attempt to organize the

[8] *N. L. R. B.* v. *W. C. Nabors Co.* (C.A. 5) decided April 29, 1952.

Union? On this point Manager Parish, Office Manager Robertson and Tannery Superintendent Waggoner, with one possible exception, were unanimously and adamant in their testimony that they had no knowledge of any union activity at the plant until "after the layoff." They were all equally vague as to the actual date and means by which they learned of the Union activity. Of the three, only Robertson indicated any possibility that he "might" have even heard rumors of union activity prior to the layoff. Waggoner originally testified that he learned of the Union activity in the plant for the first time on February 16, 17 or 18 but, upon prompting, agreed that his first knowledge came from a newspaper story appearing in the Tullahoma News of February 21.

These three again concurred in their testimony that after learning of the Union activity, they agreed that they would [fol. 475] attempt to discourage union membership "by every legal means" and secure legal advice to that end. The date this legal advice was sought was vague in the record except that it was again "after the layoffs."

On the other hand Parish admitted that some days prior to the layoff[9] employee Lavoy Hobbs had called him for an appointment prior to work and had come in and talked to him in accordance with that arrangement. To Parish Hobbs ascribed his request for a conference to the fact that another employee had accused him, Hobbs, of leading the movement towards unionization. Hobbs reminded Parish that he had been laid off by the Respondent in 1947 because the Respondent had suspected him of leading a similar union movement at that time. Hobbs then offered to work out a two-week notice of quitting rather than to get mixed up in another organizing job. Hobbs further told Parish that he knew nothing about a union, did not want to know anything about a union and "that's that." Parish answered that there was no need for Hobbs to quit and agreed to permit Hobbs to face anyone who might accuse him of leading the union movement. Parish then went on to tell Hobbs that he knew that Willie Helms was organizing in

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[9] This interview occurred between the date Hobbs signed his Union card, January 29, 1951, and February 14.

town and inquired if Hobbs knew that Ben Gold, the union president, was a member of the Communist party. After telling Hobbs that he, Parish, could do more for the employees than the Union could, Parish asked Hobbs to return the following day. When Hobbs returned the following day, Parish asked him how strong the Union was and requested Hobbs' assistance in opposing the Union for the stated reason that Hobbs had influence with the other employees. Hobbs refused saying that he wanted to have nothing to do on either side of the issue. Returning again the following day at the Respondent's request, Hobbs again refused to assist the Respondent against the Union for the same identical reason.[10]

It is also undenied that the day before the layoff Parish and Superintendent Waller (of the baseball plant) had a conversation with employee Farris in which Parish informed Farris that he thought "a union was trying to get in back there" and "I think I know who is behind that. It is Mr. Hobbs and Mr. Armstrong." Then Parish, reminding Farris that they had always "played ball together," asked "if you find anything out about it, will you let me know?"

Furthermore, in the early part of the week of the layoff Waggoner told employee Fletcher that he, Waggoner, heard that there was a lot of talk about a union coming in and that all the boys in the beam shop had signed up. Fletcher denied that he had signed a card and stated that he did not know about the other employees. On Thursday of the same week, Waggoner again approached Fletcher and told him that he could not see how a union could help the employees and that he intended to give Fletcher "a little

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[10] Parish acknowledged that he had a conference with Hobbs prior to the layoff at Hobbs' request but testified that, when Hobbs arrived, the whole conversation consisted of Hobbs' making a statement that he knew nothing about the Union, did not want to know anything about a Union and "that's that." Apparently, according to Parish's testimony, this strange conversation did not pique his curiosity about a matter which later became so important to the Respondent.

raise" and put him in Hobbs' place. Thereupon Waggoner inquired if Fletcher was a union man which Fletcher thereupon admitted.[11] Fletcher received his permanent layoff slip the next day.

[fol. 476] A few days before the layoff employee Overman remarked to Foreman Spencer that the Union was signing the employees at the Wilson Company plant very rapidly to which Spencer replied "they could never organize this place because they'll start cutting production and laying off."

Accordingly, the undersigned finds in accordance with Parish's admission and other credible facts that the Respondent had knowledge of the attempt of the employees to join the Union at its plant prior to the layoff. Further, the undersigned finds that the conversations above found constitute undue interference with the rights of the employees guaranteed in Section 7 of the Act in violation of Section 8 (a) (1) of the Act.

(d) Respondent's seniority claim

But the Respondent contends that the employees chosen for layoff on February 14-16 were selected in accordance with strict seniority so that there could have been no discrimination against union members because of that union membership. Respondent made, however, certain admitted exceptions to this rule of strict seniority. These and other exceptions are of interest here.

The first exception to this rule of seniority came in the case of T. G. (Gregg) Armstrong. Of the three men then employed in its buffing department, the Respondent laid off Gregg Armstrong, first employed on September 3, 1947, and his brother, Ward Armstrong, employed February 3,

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[11] The only part of this conversation which Waggoner denied was that he had interrogated Fletcher regarding his union membership. Waggoner frankly acknowledged that he did all in his power to oppose the Union "by every legal means." Waggoner testified that he never mentioned the word "Union" but referred to "Communists" "like everything." The undersigned accepts the testimony of Fletcher as found above.

1948 while retaining employee Martie Ulmer, whose first employment began on October 21, 1947. Thus, according to seniority, Gregg Armstrong should have been retained in the Respondent's employ. The Respondent admits that Gregg Armstrong was an exception to its seniority rule but claimed that Gregg Armstrong had requested that he be laid off ahead of his brother and of Ulmer. The facts show that on February 14, Gregg Armstrong was sent to Manager Robertson who notified him of the fact that he was being laid off and that, after being so notified, he asked Robertson not to lay off his brother, Ward, because Ward might have trouble securing other employment on account of a physical disability. Despite this request, Robertson laid off Ward Armstrong. Thus it is clear that Gregg Armstrong did not request that he be laid off regardless of seniority. He had already been laid off when he requested that Ward Armstrong be retained. Gregg Armstrong admitted that on the occasion of a prior temporary layoff, he had suggested that he be laid off before Ward or Ulmer, but denied having made this request at the time of this permanent layoff. The facts confirm Gregg Armstrong's testimony. It is to be recalled that the day prior to the layoff Manager Parish referred to Gregg Armstrong as one of the two leaders of the Union movement during his conversation with employee Farris. That union considerations played a part in the layoff of Gregg Armstrong was confirmed a few weeks after the layoff when Manager Robertson told Ward that the Respondent might put some of the other employees back to work but that Gregg had gotten "mixed up with the Union."

The next man laid off admittedly without regard to seniority was employee A. A. Overman who was originally employed May 29, 1944 and thus was the next to the oldest employee in point of seniority in his department as well as in the tannery. The Respondent retained three men in Overman's department who had less seniority than Overman by from 11 months to 3 years and 4 months. The Respondent's contention here is that Overman was laid off without regard to seniority because he was such a poor employee that Waggoner had "begged" to be allowed to

get rid of this "half a man," as he referred to Overman, when he learned of the impending layoffs. The Respondent's testimony in support of this contention was of such extreme character that, if true, no employer would have retained such an employee for a matter of days much less of years. The strangest part of the Respondent's testi- [fol. 477] mony regarding Overman was that the last particular incident to which the Respondent referred as justification for the layoff had occurred 6 months or more prior to the date of the layoff. The evidence proved that Overman had never — warned by Waggoner about his alleged deficiencies although Waggoner testified that on one occasion he had started to go and discharge Overman but that he abandoned the mission without saying a word to Overman.[12] The undersigned believes, and therefore finds, that the Respondent's testimony regarding Overman's alleged deficiencies is so exaggerated, strained and contrary to the acknowledged fact of his years of continuous employment by the Respondent as to be unbelievable. It should also be recalled that it was Overman who only a few days before his layoff had remarked to foreman Spencer upon the success the Union was enjoying among the employees of the Wilson Company.

The Respondent also admits that Steve Tucker was erroneously and incorrectly laid off in disregard of seniority due, it contended and proved, to a clerical error made upon the Respondent's records indicating that on one occasion Tucker had "quit" instead of having been "laid off" as was, in fact, the case. Respondent acknowledged this clerical error and stated that it was "sorry" about the error but could do nothing to rectify it. If Tucker had been credited with his correct seniority, employee Martin D. Smith should have been laid off in lieu of Tucker. However, the Respondent proved that Tucker had not complained to it that his seniority had not been correctly established. This is of no import for the reason that there is no showing that Tucker had any idea that the layoffs were

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[12] The date of this alleged incident was not fixed in the record.

supposed to be made on the basis of seniority.[13] It is to be recalled that about 2 weeks after the layoffs, Robertson greeted Tucker on the streets of Tullahoma with the remark: "You're still fighting them? * * * Well, that fellow Willie [Helms] is causing a lot of trouble around here, he ought to be run out of town."

In addition to these admitted cases, there is considerable doubt as to whether Lavoy Hobbs was laid off in accordance with seniority. Hobbs had originally been employed 8 days after employee Buford Cartwright in August 1946 but had never been laid off during his term of employment with the Respondent as Cartwright had been. Cartwright had either quit or been laid off during the interim so that his seniority appears to been broken.[14] On the occasion of

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[13] There is testimony in the record that Parish made a statement before the layoff as some of the employees and Parish were enjoying their morning drink at the Coca Cola machine to the effect that there would be a layoff in accordance with seniority. Assuming—but not deciding—that such testimony was true, still there was no showing that Tucker was present or heard of the statement. In this state of the record, therefore, it did not become incumbent upon Tucker to protest his seniority status. The vagueness of the testimony regarding this meeting and purported announcement at the Coca Cola machine together with the complete absence of any protests on seniority status as would be anticipated if such a statement had been made all lead the undersigned to the belief that no such announcement was ever made.

[14] The respondent maintained at the hearing that an employee's seniority was broken when he "quit" but was not broken when he was "laid off." The records of the Respondent in evidence here indicate that this was not always so for the Respondent's records show that T. J. Pollack "quit" on May 6, 1946, and that he "began" again on October 2, 1946, but Respondent's seniority list gives that same employee seniority from his original hiring date of March 8, 1944, despite his "quit" in May 1946. Upon the basis of that record Pollack, nonunion, was not laid off February 14-15. The Respondent's seniority policy was not inflexible, to say the least.

[fol. 478] one layoff Cartwright was recalled by Respondent at the suggestion of Hobbs who had not been laid off. Respondent maintained that Cartwright was laid off on account of injury on this occasion but other employees had been laid off simultaneously with Cartwright so that it appears that Cartwright was laid off at the time in a general layoff. The undersigned, therefore, finds that Hobbs had more seniority than Cartwright. It is to — recalled that Hobbs, according to Parish, was along with Gregg Armstrong, the leader of the Union movement and also had refused Parish's request that he aid Respondent in influencing the employees against the Union.

In addition to the above, if the tannery-wide seniority was to be the criterion instead of seniority in the smaller departments of the tannery, then employees Charles Fletcher and James Haley were also laid off by the Respondent in disregard of their seniority. It is to be recalled that the day before the layoff, Superintendent Waggoner inquired of Fletcher as to whether he was a Union member or not and received an affirmative answer.

While considering this seniority claim made by the Respondent, it would be well to consider the case of employee Harold Crosslin, who had been first employed by the Respondent on August 29, 1950, and thus on the basis of seniority, plant-wide or departmental, should have been the first laid off as he was the youngest man in the tan room. From February 3, to February 19, 1951, Crosslin was on the orders of Waggoner driving a truck for his brother-in-law, Russell Watson, who did contract hauling for the Respondent. Upon the completion of this assignment on February 19, Crosslin returned to his job in the tannery where he was transferred from his previous job in the tacking room to the beam house where he replaced employee Hobbs who had been laid off. Upon his return to the tannery, Waggoner informed Crosslin that one of the reasons that he had been assigned to truck driving for that period was because of the activities going on in the tannery—an obvious reference to the union activities—and that he was going to be given a better job at more money.[15] Crosslin worked all that week.

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[15] Waggoner denied any such conversation.

During that week a dozen or so of the laid off employees gathered at the Tullahoma pool room from which point they left in a body to be driven to a union meeting. Crosslin was the only man still employed by the Respondent in the group. Waggoner was in the pool hall as the group left for the automobiles. The next morning Waggoner took Crosslin into his office and inquired as to "what all of that bunch was doing up there." Crosslin answered that he did not know. A few days thereafter on Monday, February 26, Crosslin was given his permanent layoff slip and told that, "if things pick-up," he would be recalled. He has not been called back.

The Respondent contended that it "forgot" Crosslin at the time of the layoff because he had been working for Watson and thus did not appear on the Respondent's payroll and that, when Waggoner "discovered" him working he sought advice from Parish and was instructed to allow Crosslin "to work on a few days and then lay him off." It is difficult to believe that Waggoner did not know of Crosslin's return especially as Crosslin was at that time transferred on Waggoner's orders from his former job to the job formerly performed by ex-employee Hobbs. If the layoff was in fact based upon seniority, it is hard to believe that Parish would have permitted Crosslin to "work on a few days" before being laid off. Again, as in the case of the layoffs of February 14-16, there is the same coincidence of time between the discovery of Crosslin's union sympathy and his discharge. The facts indicate, and the undersigned therefore finds, that Harold Crosslin was laid off on February 26, 1951, because the Respondent discovered that he was active in the Union and not, as it had supposed when he was retained in disregard of seniority, a nonunion employee.

[fol. 479] Following this discharge, 24 employees had been discharged of whom 23 had executed union authorization cards. There remained in the Respondent's employ only 3 individuals who had executed similar cards, Martie Ulmer, Buford Cartwright and J. C. Womack.

On March 16 the Respondent came to the realization that its tannery operations required more personnel and, on that account as well as the fear that the new defense installation

nearby would drain off the labor supply, sent letters to 13 of the laid off tannery employees suggesting the possibility of two or three days work per week and inviting each to call at the plant to consider the matter at a specified date and hour. In the usual case this hour and date had passed prior to the receipt of the notice. Of the three men responding to those letters only one, Cleve Duke, secured reemployment.

Respondent fully admitted that the recipients of these letters were selected without regard to seniority. None of the 6 "exceptional" cases aforementioned were sent notices despite their high standing on the seniority roster. Thus seniority became a tool to be honored or honored in its breach in accordance as it served Respondent's purpose.

If seniority had in fact been the determining criterion in selecting employees for layoff, then in this case Respondent's defense of no discrimination would have been unassailable. But here there was a 16 2/3 percent or 25 percent error in its original application and its total abandonment in recalling employees with the result that the Respondent was able to select employees in accordance with its own preconceived idea as to the degree of their adherence to the Union. Thus Robertson's remark to Ward Armstrong that some men would be recalled but not Gregg Armstrong because he "got mixed up with the Union" had a firm basis in fact. To the then unemployed Armstrong Robertson's remark could only be interpreted to mean: "You can *either* work for the Company *or* remain a member of the Union."—than which there can be no more coercive violation of Section 8 (a) (1) of the Act.

Thus under the facts of this case the undersigned can only find that the Respondent's application of seniority with its numerous exceptions and later abandonment affords Respondent no defense to the allegation of discrimination.

After the layoff of February 14-16 and of Crosslin, employment in the tannery dropped to 27. On March 19, Cleve Duke was reemployed and beginning on April 2, 1951, Respondent began transferring men from the baseball plant to the tannery until June 1, 1951 when employment in the tannery reached its peak of 42. Therefore in addition to

the four exceptions to the strict application of the seniority rule even as understood by the Respondent, it becomes clear that 11 of the other laid off tannery employees would have been reemployed if Respondent had applied seniority as contended. However, except for Gregg Armstrong, Lavoy Hobbs, Overman and Tucker, the undersigned is unable to determine which of the laid off individuals were in fact discriminated against during the rehiring.

(e) The discharge of Martie Ulmer

Martie Ulmer was one of the first three employees of the Respondent whom organizer Willie Helms approached during his covert attempt to organize the Respondent's plant. Like Gregg Armstrong and Lavoy Hobbs, Ulmer promptly executed a union application card. Thereafter until the Friday before his discharge on March 28, 1951, Ulmer's participation in union activities appears to have been negli-ble. He, Buford Cartwright and J. C. Womack were the only employees who had signed union cards who were not laid off on February 14-16.

[fol. 480] On one occasion sometime after February 16 Waggoner took occasion to inquire of Ulmer if Lavoy Hobbs had been attempting to convince Ulmer to join the Union. Waggoner was referring to a conversation he had noted between Ulmer and Hobbs that day in downtown Tullahoma. Ulmer answered that Hobbs had only been talking to him about a job at the nearby defense installation. As a witness Waggoner admitted that he, Waggoner, thereupon went into considerable detail to prove to Ulmer that the Union was a Communist outfit and ended by telling Ulmer that "it won't pay to mess with that outfit, they will get you into trouble."

On a subsequent occasion office manager Robertson asked Ulmer to find out how employees Hence Sain and Paul Finney felt about the Union. When Ulmer told Robertson that that was none of his, Ulmer's, business, Robertson answered that it was part of his business to try to keep the Union out of the plant. However, Ulmer refused to report on his fellow employees.

As heretofore found Ulmer became one of the signatories of the anti-union petition later published in the Tullahoma

News on March 4 when it was brought to him in the plant during working hours by employee Cunningham.

On Friday, March 23, 1951, Ulmer passed out union leaflets in front of the plant before work. The same morning Robertson came to Ulmer's place of work in the plant wanting to know what he was doing passing out leaflets. Ulmer informed Robertson that he had joined the Union. Robertson then ordered Ulmer not to hand out leaflets in the plant, a thing which Ulmer denied having done. Then Robertson took Ulmer into his office with Parish where he told Ulmer that neither this nor any other union was going to come into the plant and tear down what it had taken him 15 years to build up. Parish remarked: "All I've got to say [is] watch your work" and added that "this Communist outfit was not any good."

After lunch that same day Foreman Kimbrough shut off the power to Ulmer's machine whereupon a large group of employees including Kimbrough gathered around and informed Ulmer that if he was for the Company, he could stay but that if he was for the Union, he would have to leave the plant. When Ulmer announced that he was for the Union, a motion was made to throw Ulmer out of the plant which Foreman Kimbrough seconded.[16] However, the motion was not executed because the other employees and Ulmer returned to work.

On the following Monday when Ulmer reported for work, he discovered that his time card was missing from the rack. In the presence of Foreman Kimbrough, employee Limbaugh stated that he had removed Ulmer's card and that it was going to be kept out of the rack. Kimbrough did nothing but say that he could not keep the card in the time rack and would be unable to pay Ulmer without the card.

Shortly thereafter Superintendent Waggoner attempted to induce Ulmer to quit because "all the boys were mad" at him. When Ulmer refused to quit, Waggoner stated that he would not discharge him and would keep Ulmer's time himself so that Ulmer could be paid but advised Ulmer to talk over the matter of voluntarily quitting Respondent employ with his wife before making a final decision. Wag-

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[16] Kimbrough was not called as a witness.

goner then professed inability to prevent the employees from removing Ulmer's timecard from the rack.[17]

[fol. 481] Ulmer reported for work as usual on Tuesday morning at 7 o'clock when Waggoner inquired if he had conferred with his wife about quitting. Ulmer expressed his determination to remain unless Waggoner discharged him. To this Waggoner answered: "Well, I can't fire you, but you are leaving here today."

Almost 2 hours thereafter Waggoner returned saying that he had learned that Ulmer had begged employee Hugh Bennett for a job with the Respondent. When Ulmer denied having done any begging for the job, Waggoner called Hugh Bennett to verify his statement. According to the undisputed testimony of Ulmer, Bennett refused to so verify whereupon employee Paul Finney[18] volunteered the information that Ulmer had begged him, Finney, for the job, a remark which led ultimately to harsh words and fisticuffs. Waggoner and Kimbrough were both present throughout while Robertson entered the room during the fight. At the conclusion of the fight Robertson and Waggoner took Ulmer into an office and informed him that he was discharged for having struck the first blow or for having called Finney a "liar"—depending upon whether one accepts the testimony of Ulmer or of Robertson. Thus was Ulmer's employment with Respondent terminated.

Following his discharge Ulmer swore out a warrant charging Finney and Waggoner with assault and battery.

A day or so thereafter Parish, who had been absent during the Ulmer-Finney fisticuffs, telephoned Ulmer and re-

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[17] At the hearing Waggoner testified that he was unable to locate the employees responsible for removing Ulmer's timecard.

[18] At the hearing the General Counsel was permitted to amend his pleadings to allege that Paul Finney was an "agent" of the Respondent. The record only shows that Finney was an oldtime and apparently valued employee whose tastes in union matters apparently coincided with those of the Respondent. Such evidence is insufficient to create any agency relationship between the Respondent and Finney.

quested him to come to the office and explain the circumstances of that fracas adding that, if Ulmer had been right in the episode, he would be reinstated. Ulmer requested the right to be accompanied at this interview by Willie Helms but Parish refused to permit Helms to attend, referring to him as a "Communist." Ulmer thereupon suggested J. R. Blackburn as his witness, this was acceptable to Parish.

However, when Ulmer and Blackburn arrived at the office, Parish began asking Ulmer questions and writing down the answers. Blackburn objected to this procedure and advised Ulmer not to answer any questions so long as the answers were reduced in writing. Even though Parish reiterated his offer to reinstate Ulmer if he had been right in the episode, Ulmer followed the advice of Blackburn and refused to answer questions if the answers were reduced to writing.

Although the trial on the assault charge was originally scheduled for that coming Saturday, no hearing was ever held as each party in turn requested postponements until ultimately the case was dismissed for lack of prosecution.

The facts show that Ulmer had been a "very satisfactory employee," until the day he assisted in the distribution of the union leaflets in front of the Respondent's plant to the knowledge of the Respondent's supervisors. Thereupon the Respondent within a matter of hours, attempted to have him leave its employ and warned him to watch his work when he refused to do so. The Respondent at the very least permitted its antiunion employees to make life unbearable for a known union advocate in its plant during [fol. 482] working hours while under the Respondent's control and direction. Despite knowledge of the unlawful conduct of its antiunion employees the Respondent failed or refused to maintain discipline over them professing an inability to maintain such discipline within its own plant. When Ulmer expressed a determination to retain his employment unless discharged, Waggoner refused to discharge him but prophesied that he would leave the plant that day. In fullfillment of this prognostication Waggoner himself instigated and promoted the incident leading to the fisticuffs which then became the Respondent's excuse for dis-

charging Ulmer—thereby fulfilling Waggoner's prognostication.

A mere reading of the facts of the Ulmer case is sufficient to prove that upon learning of Ulmer's union membership and activity, the Respondent determined to, and did, eliminate Ulmer from its employ by whatever means. Nor can there be any question but that the Respondent's determination stemmed directly from its knowledge of Ulmer's union membership and activity. Clearly the Respondent discharged Ulmer on March 28, 1951, because of his membership in and activities on behalf of the Union in violation of Section 8 (a) (3) of the Act, and the undersigned so finds.

The fight was merely the excuse by Respondent to attempt to justify the discriminatory nature of the discharge, an excuse both prophesied and arranged by Respondent's own supervisors. Parish himself appears to have been upset by the crudity of Respondent's action when he attempted to investigate the incident or else, because of the one sided nature of his investigation for the evidence failed to disclose that he attempted to have a written statement from Waggoner or Finney, perhaps he was attempting to find a defense for those two to the then pending criminal action against them. At least from the actions of the Respondent over the past week, including Parish's own threat, Ulmer had no cause to expect fair play from Parish at that time. Respondent's actions here could hardly be classified as fighting the Union by "every legal means."

(f) Conclusions as to the tannery discharges

This is a case of an admittedly antiunion employer, one who upon learning of the organizational drive determined to oppose the Union by "every legal means" and who at the hearing promised to continue that same opposition in the future, with a valid economic reason for a layoff in its plant; laying off permanently 24 out of 26 union employees from a staff of 51 in the tannery, a division of Respondent's operations where the Respondent believed the move towards unionization was centered. The question at issue becomes, therefore, whether the discharges were motivated by the economic considerations or the hostility toward un-

ionization. And as a sort of corollary whether the Respondent did restrict its opposition to "legal means."

Granted that the imminent allocations system on hides made a reduction in force at Respondent's tannery an obvious necessity, yet when and how large that reduction should be were still matters of speculation on February 14-16. As noted heretofore a timid employer logically might well have reduced his staff early in January when the imposition of controls appeared inevitable—except, of course, that baseball production was at its very peak throughout the month of February—or a careful employer might well have waited until February 28, 1951 when his allocation became known and he could calculate accurately how large the reduction should be. As of the week end before February 14-16, Parish appears to have been a "careful" employer by the above definition for at that time he advised the Tullahoma News that he anticipated a layoff "within 30 days"—clearly referring to the time Respond-
[fol. 483] ent would know its quota and could make an intelligent reduction in force. Yet 3 or 4 days later Parish made his drastic reduction still without knowledge of what his hide quota was to be. Why this sudden change of plan?

During this short period of time there was no change in the economic situation at all. Hence the economic considerations played no part on the change in the timing of the layoff. The evidence showed that the Respondent had given little, if any, thought to a layoff until the week end of February 10-11 even though the economic situation had been obvious for approximately a month. But the evidence does disclose—contrary to the Respondent's original contention—that at about this time and just prior to the layoff, the Respondent learned from Lavoy Hobbs and others that its tannery employees were joining the Union, that in fact all 5 of the employees in the "bear house," a department in the tannery, had signed up with the Union.

Promptly upon acquiring this information, the Respondent went into action. Parish attempted unsuccessfully to convince Lavoy Hobbs to use his influence with the employees to reject the Union. Employees were interrogated about their union membership or affiliation. Other employees were solicited to report upon the Union activity

and upon the union membership of other employees, espionage in other words. And at least one threat was made that the Respondent would start "cutting production and laying off" before it would allow the Union to organize. All of these activities of the Respondent are clear cut violations of Section 8 (a) (1) of the Act so it is equally obvious that Respondent did not restrict its opposition to the Union to "legal means." Parenthetically it might be remarked here that the coercive tactics Respondent employed against Martie Ulmer after learning of his union activities and membership are only more obvious because they were more concentrated.

One other thing should be mentioned at this point. And that is the campaign of Superintendent Waggoner and other officials beginning at this time of talking about "the Communists like everything." Even if Waggoner's testimony that he never used the word "union" at all were correct, yet there could be no doubt in the hearer's mind that Waggoner was talking about the Union even though he substituted the word "Communist" therefor. One cannot relieve one's self of liability for interference, restraint and coercion in violation of the Act by the mere transposition of the word "Communist" for the word "union" as Waggoner attempted to do by threatening employees that they would get in trouble by "messing" with the "Communists" as everyone who joined the Union promptly became in Waggoner's conversation. This change in phraseology fooled no one; nor was it intended to.

Thus the layoff of February 14-16 coincided in time with Respondent's discharge of the organizational attempt but not with the economic situation. As noted heretofore, it coincided in personnel with the organizational effort also. The fact that 25 of the 26 employees laid off in the tannery had executed union authorization cards indicates strongly that Respondent was not laying off employees without knowledge of the employees' union affiliation. The percentage was too high for it to have been fortuitous. The percentage of deviations from the Respondent's professed policy of strict seniority in selecting the personnel for layoff—16⅔% or 25% depending upon whether departmental or plant-wide seniority was the criterion—each of which

covered an employee known by Respondent to be a leader or strong advocate of the Union, gives definite proof that those individuals, at least, were selected for discharge because of their union membership or activity. The undersigned is therefore convinced that Respondent used an economically justifiable layoff to discriminate against T. G. Armstrong, Lavoy Hobbs, A. A. Overman and Steve Tucker by discharging them on February 14-16.

[fol. 484] In this connection it is noteworthy that only one employee, Buford Cartwright, was retained in the "beam house" where Waggoner understood that all the employees had signed with the Union. It should also be noted that by February 19, the very next working day, the Respondent had discovered that the cut — the beam house was too severe because on that day Crosslin was transferred there from another department of the tannery to replace Lavoy Hobbs.

By March 16 the Respondent had determined that the economic factors did not justify as severe a layoff as it had put into effect on February 14-16 for on that latter date it wrote 13 laid off employees including the one non-union employee laid off, suggesting the possibility of part time employment. In selecting the individuals for this conditional recall, Respondent made no pretense of utilizing seniority. Due also to the fact that these letters were received in the usual case after the time set therein for the individual's interview with Respondent, only 3 individuals answered the letter and only 1 was reemployed. But from March 19 to April 30, 1951 employment climbed steadily until the staff reached 40 as compared with the staff of 27 immediately after February 14-16. By May 28 the tannery staff reached a peak of 42. In addition to this increase in staff, Respondent's records prove that the tannery employees began working overtime hours immediately after February 14-16 and continued so doing until July 15. Thus Respondent's discriminatory motivation in ridding itself of all union employees led it to make a larger reduction than the economics of the situation warranted. In addition to the four cases of discriminatory application of seniority, subsequent events prior — that 9 or 11 others would not have lost their jobs if the Respondent's deter-

mination had been on economic grounds alone. Who these 9 individuals would have been cannot be determined now. Nor as the discrimination was due to Respondent's illegal motivation is it incumbent upon the undersigned to select which employees were discriminated against. The undersigned will, therefore, recommend that all those laid off on February 14-16, except those four mentioned above who are entitled to immediate reinstatement with back pay be placed on a preferential list to be offered employment ahead of any others as jobs become available.

The discriminatory motivation of the Respondent in discharging Crosslin and Ulmer is so clear as to require little, if any, discussion. By February 26, the date of Crosslin's discharge, the reduction in force necessitated by economic situation had allegedly been taken care of by the discharges of February 14-16. The mortality of union employees in the beam shop had been so high that Crosslin, after being told by Waggoner that, having been absent from the plant during the union drive and therefore apparently being free of union affiliation, he was to be given more pay and Lavoy Hobbs' job, was transferred by Waggoner into the beam shop on to the job from which Lavoy Hobbs had been laid off only the working day before. In view of this transfer the undersigned can place no credence in Respondent's purported explanation that it had "forgotten" Crosslin and only "discovered" him working some time later and thereupon discharged him. The fact of the matter is that Respondent discharged Crosslin only upon discovering that he was a union employee and after a warning that he would get into trouble "messing" with the union crowd. The discrimination as to Crosslin is therefore clear and so the undersigned finds that the Respondent violated Section 8 (a) (3) by discharging him on February 26, 1951.

In Ulmer's case Waggoner and Parish threatened him with the loss of employment within hours after discovering Ulmer passing out union leaflets at the plant gate. These threats were continued thereafter by a group of anti-union employees with the active cooperation of Respond- [fol. 485] ent's foreman and superintendent who, indeed, tried to talk Ulmer into resigning from Respondent's em-

ploy because "the men are mad at you." Respondent not only failed but neglected to maintain reasonable order and discipline among its employees and, in fact, had its tannery superintendent instigate and promote the fracas which the Respondent used as the pretext for Ulmer's dismissal, an event which Waggoner had prognosticated only a few hours before. The undersigned is constrained to remark that this discharge of Ulmer was one of the more callous violations of Section 8 (a) (3).

In comparison with the immediate and strict orders given to Ulmer not to distribute union leaflets in the plant, we have the instance of the antiunion petition circulated in the plant prior to its publication on March 4, 1951 during working hours with not only the tacit consent of the Respondent but, indeed, with the active participation of five supervisory officials including the baseball plant superintendent, John Waller by becoming signatories thereto. Such discriminate treatment of union and nonunion efforts together with the active participation of such officials as John Waller in the antiunion moves could only interfere with, restrain and coerce the employees in violation of Section 8 (a) (1) of the Act, and the undersigned so finds. Respondent's purported defense to this—an alleged lack of knowledge—is both too incredible for belief and untrue in law.

(g) *Discharges of Annie B. Blackburn and Sally Blackburn*

At the Respondent's plant a "home sewer" is an individual who sews covers on baseballs in her own home and in accordance with her own convenience. Such a home sewer would appear at the plant, secure a sack of 10 dozen yarn balls, covers and threads and take them home to work on at her convenience returning them to the plant upon completion and then securing another batch of 10 dozen balls.

In the spring of 1951, the supply of balls for home sewers fell off as was customarily at that season so that as each home sewer returned a finished batch of balls, she was given a number which entitled her to new supplies after those women who held lower numbers had been supplied. This was an attempt by the Respondent to distribute the supplies equally among the home sewers.

Except for about a 3-year period between 1947 and No-

vember 1950 Annie B. Blackburn had been a home sewer for approxi ately 19 years. She was the wife of one J. R. Blackburn w o had formerly worked for the Respondent and who wa actively assisting Willie Helms in organizing the tannery ven to the extent of passing out circulars in front of the lant to the knowledge of the Respondent.

About Ma ch 16, Annie B. returned a sack of completed baseballs to Everett Hodge, foreman of the home sewers, and was giv n No. 48. Her number was not reached that day during he distribution of the supplies. She then reported a fe days thereafter as requested by Hodge. On this occasio after Hodge distributed supplies to the sewer holding No. 7, he announced that there were no more supplies to be iven out. Annie B. inquired if her number would be "ood" on the next distribution date and was told by Ev ett Hodge: "Annie B., I can't let you have anymore ba s—on account of the Union. J. R. handing out union rculars—Chuck [Parish] told me not to let you have a more and John did too, John Waller. They told me twi not to let you have any more balls."

Thereupo Annie B. stormed in to see Parish in his office and told hin of her conversation with Hodge to which Paris- answered: I don't know what's got into Everett. He's [fol. 486] g so he just tells any thing." Parish went on to expl n that there was a leather shortage so that there was shortage of balls but that "We'll get this thing thra ed out." Annie B. returned home that day without an balls and with no further explanation.

A day o so thereafter, Parish sent for Annie B. who thereupon, ent to the plant with her sister-in-law, Sally Blackburn, who had worked in the Respondent's packing room from January 2, 1951 to February 16, 1951, when she had to ay off in order to care for another sister who was having a baby. At the time of her layoff, Foreman Huskey pr mised Sally that she would be returned to work just as so plimented as she was able to leave her sister, and con- her return r on being a good packer. At the time of packing r to the plant, Sally desired reinstatement in the longer req m as her attendance upon her sister was no

When A red.

"Annie B nie B. saw Parish that day he said to her:

I have checked around and I found out you

wasn't for that and you are absolutely all right—I can let you have balls. I have got two sacks of balls." Annie B. remarked that she had not been a union woman but that Parish had made her into one. Parish then referred to her husband, "J. R.," and the fact that he could work for the Respondent at any time adding: "This Willie Helms, we do know, we absolutely do know that he is a Communist—the F.B.I. is looking for him." Annie B. remarked that Parish knew Helms' address so that she could not understand why the F.B.I. could not pick him up if, in fact, he were a Communists. Their conversation ended then as Sally returned from interviewing Foreman Huskey, to whom Parish had sent her previously about being reinstated. When she left the plant that day, Annie B. forgot the sack of balls Parish referred to and which were later delivered to her by Paul Finney, her brother, at Parish's request.

On March 28, 1951, Annie B. received a post card from the Respondent informing her that she was one of the 125 home sewers who were being retained in accordance with their seniority and stating further that the other 325 home sewers had to be released because of the shortage of balls.

About April 5, 1951, Annie returned the completed balls to Hodge, received a number but, as was generally the case among the home sewers at this time, did not receive any supplies that day. She returned to the plant twice thereafter for balls but received none as on each occasion Hodge stated that he had run out of supplies before he reached Annie B.'s number. Since that time Annie B. has never returned to the plant and, therefore, never received any more balls. At the hearing, however, Hodge testified that, if Annie B. returned to the plant, she would receive balls in her regular *term.* [19]

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[19] Line 21, page 938 of the transcript is hereby corrected to read as follows:

> TRIAL EXAMINER WILSON: Mr. Hodge, one other question. If Annie B. Blackburn were to come to your plant today, would she get balls as a regular sewer would?
>
> The WITNESS: Yes.

Although the undersigned accepts the substantially undenied testimony of Annie B. as found above, and finds that the statements made by both Hodges and Parish to her were designed to and intended to interfer- with, restrain and coerce Annie B. into refraining from becoming a [fol. 487] member of the Union in violation of Section 8 (a) (1) by threatening to end her employment with the Respondent, still he does not believe that the Respondent in fact discharged Annie B. as threatened, because she was notified thereafter on March 28 that she was one of the 125 home sewers to be given balls. She thereafter returned twice for more materials and received none on either occasion became convinced incorrectly that she had been discharged when, in fact, as she herself testified, the supplies ran out before her number was reached. Annie's union affiliation, if any, did not entitled her to any special consideration in securing materials. So long as the Respondent treated her exactly as it treated the other home sewers no discrimination was in fact practiced against her. The evidence showed that at this time the other home sewers had to return to the plant a number of times before securing new materials. The undersigned believes that that is what occurred with respect to Annie B. and that she was not discharged despite the threats which both Hodge and Parish had made to her. The undersigned, therefore, finds that, while the Respondent was guilty of interfering, restraining, and coercing Annie B. in violation of Section 8 (a) (1) through the threats made by Hodge and Parish, it did not in fact discharge her so that it did not violate Section 8 (a) (3).

Now to return to Sally, As she marched into Parish's office while Parish was talking to Annie B., Sally broke in to tell Parish that Foreman Huskey had informed her that there was no work for her in the packing room and requested her separation slip. As Parish was making out the slip, he marked it as though Sally had voluntarily "quit." She protested the use of the word "quit" whereupon Parish angrily told her not to tell him what to put on the slip, that he would put on there what he wanted to. At this point, Huskey walked into the room and acknowledged to Parish that Sally had arranged a layoff

with him for the purpose of tending her sister. Thereupon Parish added to the word "quit" the words "to take care of sister." As he was making this addition, Parish asked: "Sally, haven't I always been nice to you?" To this Sally answered: "Yes, all you have ever said to me was 'good morning,' this is the first time I ever came in to talk to you on a conversation and you bristled right up like a bull dog." Both Sally and Parish acknowledged that their voices rose in an angry fashion while Parish maintained that Sally used abusive language to him. The upshot of these angry words was that Parish changed Sally's layoff slip from a "temporary" layoff to a "permanent" layoff, handed the slip to Sally and ended the conversation. Sally has not worked for the Respondent since that time.

Sally, unlike Annie B., had executed a union authorization card.

Perhaps Parish treated Sally in a shabby fashion, especially as Huskey had promised Sally that he would keep her job open for her return and had urged her to return as quickly as possible because she was a good employee, but, nonetheless, this Act does not protect an employee from shabby treatment by an employer. The evidence here shows that, justifiably or not, Sally and Parish engaged in an angry dispute with the result that, probably in a fit of anger, Parish discharged Sally. The dispute was not over any union activity nor, in fact, is there any evidence that the discharge was based in anyway upon Sally's real or imagined union activity or union membership.

Therefore, the undersigned will recommend that the complaint so far as it alleges the discharges of Annie B. and Sally Blackburn to have been in violation of Section 8 (a) (3) of the Act be dismissed.

[fol. 488] IV. The effects of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor

disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

It having been found that the Respondent has engaged in certain unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It having been found that the Respondent discriminated in regard to hire and tenure of employment of A. A. Overman, Steve Tucker, T. G. Armstrong and Lavoy Hobbs on February 14-16, 1951 by discrimination in regard to tenure of employment of each of the above named individuals, on February 26, of Harold Crosslin by discharging him and on March 28, of Martie Ulmer by discharging him. The undersigned will therefore recommend that the Respondent offer to A. A. Ove-man, Steve Tucker, T. G. Armstrong, Lavoy Hobbs, Harold Crosslin and Martie Ulmer immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make each of them whole for any loss of pay he may have suffered by reason of said discrimination by payment to each of them of a sum of money equal to that which he would have earned as wages from the date of the discrimination against him to the date of the offer of reinstatement less his net earnings during such period, in accordance with a formula set forth in *F. W. Woolworth Company.* 90 NLRB No. 289.

It has also been found that the Respondent discriminated against 9 or 11 of those employees listed in Appendix A attached hereto because of their union membership by discharging more employees than the economic considerations justified on February 14-16. It is impossible for the undersigned to determine which of the individuals discharged on February 14-16, were thus discriminated against. However, as the Respondent is responsible for the discrimination, it is incumbent upon the Respondent to straighten out the consequence of its unfair labor practices. In order, therefore, to restore the status quo as best it can be rein-

stated as of this date, the undersigned will recommend that the Respondent place all the individuals laid off on February 14-16, (exclusive of the six mentioned heretofore) upon a preferential list in accordance with the seniority of each and offer reinstatement to each in accordance with said lists as job opportunities become available at the Respondent's plant.

Upon the consideration of the record as a whole, the undersigned is convinced that the Respondent's conduct in employing the many unfair labor practice tactics it did in order to prevent the unionization of its employees indicates an attitude of opposition to the purposes of the Act generally. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, thereby minimizing industrial strife, which burdens and obstructs commerce and thus effectuates the policies of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record, the undersigned makes the following:

[fol. 489] Conclusions of Law

1. International Fur and Leather Workers Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of A. A. Overman, Steve Tucker, T. G. Armstrong and Lavoy Hobbs, and by discharging Harold Crosslin on February 26 and Martie Ulmer on March 28, 1951 and by discriminatorily displacing those individuals (other than the above named employees) laid off on February 14-16, 1951 thereby discouraging membership in International Fur and Leathers Workers Union, the Respondent has engaged in and is engaging in, unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engag-

ing in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Respondent did not commit any unfair labor practice in regard to Annie B. Blackburn and Sallie Blackburn.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that Lannom Manufacturing Company, Tullahoma, Tennessee, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Fur and Leather Workers Union by discriminating in regard to the hire or tenure of employment of its employees, or by discriminating in any other manner in regard to any term or condition of employment in order to discourage membership therein;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Fur and Leather Workers Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid of protection or to refrain therefrom, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to A. A. Overman, Steve Tucker, T. G. Armstrong, Lavoy Hobbs, Harold Crosslin and Martie Ulman immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or his other rights and privileges, and make each of them whole for any loss of pay, which he may have suffered by reason of such discrimination against him in the manner

provided in the section of this Intermediate Report entitled "The remedy";

[fol. 490] (b) Place the other individuals laid off on February 14-16 1951, and listed in Appendix A upon a preferential list in accordance with the seniority of each of those individuals, and, as job opportunities become available in the Respondent's plant, offer each of those individuals such employment in accordance with said lists before any other individual is hired;

(c) Post in conspicuous places at its Tullahoma, Tennessee, plant, and in all places where all notices to employees are customarily posted, copies of the notices attached hereto and marked "Appendix B." Copies of said notice to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Tenth Region in writing within twenty (20) days from the date of this Intermediate Report what steps the Respondent has taken to comply herewith.

It is further recommended that on or before twenty (20) days from the receipt of this Intermediate Report, the Respondent notifies the Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

Dated at Washington, D. C., this 3rd day of July, 1952.

Thomas S. Wilson, Trial Examiner.

[fol. 491] APPENDIX A

Carl McPheron.
Harold Crosslin.
Coner Grant.
Dan Riddle.
Cleve Duke.
Woodrow Hobbs.
Willard Farris.
James L. Webb.
Bobby J. Webb.
Lois Williams.
Sam Neal.
Ward Armstrong.
Edward R. Mines.
Fred Millramy.
Charles Fletcher.
Eugene Rackler.
James Haley.
Howard Duke.
Frank Brown.

[fol. 492] APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to

The Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL FUR & LEATHER WORKERS UNION or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously en-

joyed and make them whole for any loss of pay suffered as a result of the discrimination.

T. G. Armstrong	A. A. Overman	Martie Ulmer
Lavoy Hobbs	Steve Tucker	Harold Crosslin

We will place the following named employees on a preferential list and offer each of them in accordance with his seniority employment ahead of all others as job opportunities become available.

Carl McPheron	Louis Williams
Frank Brown	Sam Neal
Coner Grant	Ward Armstrong
Dan Riddle	Edward R. Mines
Cleve Duke	Fred Millramy
Woodrow Hobbs	Charles Fletcher
Willard Farris	Eugene Rackler
James L. Webb	James Haley
Bobby J. Webb	Howard Duke

All our employees are free to become or remain members of the above named union or any other labor organization. We will not discriminate in regard to hire or tenure of em-[fol. 493] ployment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

Lannom Manufacturing Company, (Employer). By —— ——, (Representative), (Title).

Dated —— ——.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[fol. 494] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

March 3, 1956.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Dated this nineteenth, day of December, 1955.

[fol. 495] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI.—Filed April 23, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MAR 1 1956
HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1955

No. ~~723~~ 40

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as successor by merger to INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA,

Petitioner-Intervenor,

v.

NATIONAL LABOR RELATIONS BOARD and LANNOM MANUFACTURING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HAROLD I. CAMMER,
9 East 40th Street,
New York 16, New York,
Attorney for Petitioner.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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IN THE

Supreme Court of the United States

October Term, 1955

No.

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as successor by merger to INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA,

Petitioner-Intervenor,

v.

NATIONAL LABOR RELATIONS BOARD and LANNOM MANUFACTURING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO,[1] a labor organization, prays that a writ of certiorari issue to review an order of the United States Court of Appeals for the Sixth Circuit, Judge Stewart dissenting, (R. 65, Appendix A herein) which, without reaching the merits, dismissed the petition of the National Labor Relations Board (R. 84-85) for enforcement of its unfair labor practice order (R. 76-83)

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[1] Amalgamated is successor by merger to International Fur & Leather Workers Union of United States & Canada (hereafter interchangeably referred to as Fur and Leather or the Union). The merger was effectuated in February, 1955 after the submission of the case below (R. 65).

against the respondent Lannom Manufacturing Company. The ground of dismissal was that Fur and Leather, the charging union, had lost its compliance status under the Labor Management Relations Act, 1947, because its former president, Ben Gold, had been convicted under 18 U. S. C. § 1001 of having filed a false non-Communist affidavit (R. 66-74).

Opinions Below

The opinions in the Court of Appeals (R. 66-74, Appendix B herein) are reported at 226 F. 2nd 194.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). The order sought to be reviewed was filed October 6, 1955 and the time for filing this petition was extended to and including March 3, 1956 by an order made by Mr. Justice Reed on December 19, 1955.

Questions Presented

1. Whether a labor organization may be retroactively deprived of its compliance status under section 9(h) of the Labor Management Relations Act, 1947, on account of a conviction, in 1954, of one of its officers of having filed a false affidavit under that section in 1950.

2. If so, whether the loss of compliance may be carried into 1952, when the 1950 affidavit (being effective to maintain compliance for only one year) was *functus officio* as to the Union's compliance status, and such status was then based upon a later affidavit which was not the subject of indictment or conviction.

3. Whether, even if the answers to both of the foregoing questions are affirmative, such decompliance may be

effectuated while the conviction on the 1950 affidavit is still on appeal and the appeal presents substantial questions.

4. Whether the Court of Appeals for the Sixth Circuit was not required to give effect to a final judgment of the District Court for the District of Columbia, entered in an action between the Union and the Board and affirmed by the Court of Appeals for that Circuit, that the Union's compliance status was not affected by the conviction.

Statute Involved

29 U. S. C. §159(h) [Labor Management Relations Act, 1947, § 9(h)] provides:

> "No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits."

Statement of the Case

1. The Union's Compliance

Prior to its merger with Amalgamated, Fur and Leather was an international union to which were affiliated many local unions throughout the United States. For many years, until his resignation in 1954, Ben Gold had been its president (R. 25).

Since 1950 Fur and Leather had required its officers, as a condition of holding union office, to file annually, in accordance with the compliance provisions of the Act, the non-Communist affidavits provided by section 9(h) thereof. Such affidavits are effective to maintain "compliance" for one year. Annually in 1950, 1951, 1952, 1953 and 1954 these affidavits were filed by each of its officers, including Gold, and the Union's compliance was continuous (R. 24).

2. The Unfair Labor Practices

Early in 1951, Lannom discharged a number of its employees who were then attempting to organize and join a local affiliated to Fur and Leather. On charges duly filed, the Board, on February 27, 1952, issued an unfair labor practice complaint against Lannom. After holding hearings the Board, on March 20, 1953, issued a Decision and Order (R. 76-83) in which it found that Lannom had interfered with, restrained and coerced its employees in the exercise of their guaranteed right to self-organization and, among other remedial action, ordered the reinstatement with back pay of twenty-four employees who, it found, had been unlawfully discharged.

3. Gold's Subsequent Indictment and Conviction

In August, 1953, Gold was indicted on a charge that his 1950 affidavit was false. The indictment did not put in issue the truthfulness of the 1951, 1952 or 1953 affidavits which he had filed before the indictment and on which Fur and Leather's subsequent compliance status (and particu-

larly its status on February 27, 1952, the date when the Board issued its complaint) was based.

Gold was convicted on April 30, 1954 and sentenced to one to three years (R. 57-58). The trial court continued Gold on the same bail pending appeal, ruling that the case presented substantial issues of law and fact warranting review (R. 40). An appeal to the Court of Appeals for the District of Columbia was immediately taken and the case is now pending undetermined in that court (No. 12352).[2]

4. The Litigation in the District of Columbia Concerning the Effect of the Indictment and Conviction Upon the Union's Compliance Status.

As a result of the conviction, the indictment, and other preceding events involving accusations that Gold's affidavit was false, the Board, on three separate occasions, sought to declare Fur and Leather out of compliance. In a series of actions between the Union and the Board, the District Court and the Court of Appeals for the District of Columbia, on each such occasion, enjoined the Board from impairing the Union's compliance status on the ground of the falsity of the affidavits, holding that the sanction against a false affidavit was a criminal one, against the offending officer, not decompliance of the Union. In *Fur and Leather Union* v. *Herzog*, 110 F. Supp. 220, affd. *sub nom. Farmers* v. *Fur and Leather Union*, 211 F. 2d 36, cert. den. 347 U. S. 943, the Board was permanently enjoined (R. 42-43) from conducting an inquiry into the truth or falsity of the Gold affidavits. The Court of Appeals there held (211 F. 2d at p. 39):

> "The scheme of § 9(h) is clear. It imposes a criminal penalty for filing a false affidavit under

[2] Oral argument on the Gold appeal was had before a panel of the Court on March 28, 1955. On January 12, 1956, the Court, *sua sponte*, set the case down for rehearing *in banc* and such rehearing was had on February 9, 1956.

> § 9(h), in order to deter Communist officers from filing at all; then the failure of such an officer to file is made the touchstone for barring his union from crucial benefits under the Act, as an incentive to the membership to rid itself of such leadership. There is nothing in the Act or in its legislative history or in good sense to indicate that Congress meant to go further and impose the drastic penalty of excluding the union from the Act's benefits because its officers had deceived the Union as well as itself by filing a false affidavit."

Subsequently, in *Fur and Leather Union* v. *Farmer,* 117 F. Supp. 35 (D. C., D. Col.), stay den. Dec. 4, 1953 (No. 12347, C. A., D. Col.); cert. den. 347 U. S. 943, the Board was enjoined from impairing or suspending the Union's compliance as a result of Gold's indictment (R. 46-48). And in *Fur and Leather Union* v. *Farmer,* 26 Labor Cases ¶ 68,596 (not officially reported), Civil No. 2656-54, July 20, 1954 (D. C., D. Col.), affd. 221 F. 2d 862 (C. A., D. Col.), the same court further enjoined the Board from impairing the Union's compliance status on account of Gold's conviction. The Court of Appeals for the District of Columbia wrote on this occasion as follows:

> "Congress explicitly provided a criminal penalty for false non-Communist affidavits. It assumed that this threat of criminal sanctions would be a sufficient deterrent to false swearing by union officers. If these sanctions have been proved insufficient, it is for Congress, not the Board, to find new ones."

The Court added in a footnote:

> "Nor does the Act empower the Board to reject Gold's 1954 affidavit on the ground that his 1950 affidavit was false."

The injunction which was thereupon affirmed and the findings and conclusions on which it was based (R. 51-54), were in effect during the pendency of the enforcement proceedings in the Sixth Circuit, as that court recognized (R. 68-69, 226 F. 2d, at p. 196). Nevertheless the court below refused to give them effect.

5. The Proceedings and the Ruling Below

In obedience to the injunction (R. 21) the Board filed the present enforcement petition. Lannom thereupon moved to dismiss because of the conviction, alleging that Gold's "continuous" affiliation with the Communist Party was "well known to all the members of the Labor Board, as well as to the general membership of the charging union" (R. 1). The Union was granted intervention for the purpose of opposing the motion to dismiss (R. 2-12).

The order sought to be reviewed sustained this motion, the majority holding that

1. They would not follow the several rulings on the question by the Court of Appeals for the District of Columbia. 226 F. 2nd, at p. 196.

2. A false affidavit is a nullity for compliance purposes. *ibid,* at p. 197.

3. Gold was a member as of February 27, 1952 (the critical date, when the Board's complaint issued) because his August 1950 affidavit was false. *ibid,* at p. 198.

4. The pendency of Gold's appeal is immaterial. *ibid,* at 199. The court said on this:

> "This case is complicated by the fact that an appeal on the part of Gold is pending in the Court of Appeals for the District of Columbia from the judgment of the District Court. It is indefinite when that litigation will end, considering the possibility of further proceedings in the Supreme Court in the event of affirmance, and the possibility of a

> new trial in the event of a reversal. We realize that the ultimate termination of the criminal proceedings in the District of Columbia may present a different factual situation from what is now before us, but consider it inadvisable to 'freeze' this proceeding for an unreasonable length of time awaiting such termination, which would in the meantime prevent a possible review by the Supreme Court if so desired by one of the parties. We are accordingly ruling on the motion on the basis of the record as it presently stands."

Judge Stewart dissented on the ground that the Union's compliance status in February, 1952 was not based on Gold's 1950 affidavit but on his affidavit filed in August, 1951, which was not shown to be false. *ibid,* at 199-200.

Reasons For Granting The Writ

1. (a) The decision of the Sixth Circuit, as the majority expressly states, is directly in conflict with a consistent series of decisions of the Court of Appeals for the District of Columbia rendered before and adhered to since the holding below. *Farmer* v. *U. E.*, 211 F. 2d 36, cert. den. 347 U. S. 943; *Farmer* v. *IFLWU,* stay den., No. 12,347 (C. A., D. Col.), September 9, 1954; cert. den. 347 U. S. 943; *Farmer* v. *IFLWU,* 221 F. 2d 862; *International Union of Mine, Mill & Smelter Workers* v. *Farmer,* 226 F. 2d 780. See also *Aerovox Corp.* v. *NLRB,* 211 F. 2d 640; cert. den. 347 U. S. 968.

Since the Board is located within the District of Columbia and since all international and national unions which seek to comply must file their compliance forms and registration statements within the District, the conflict flowing from a decision which results in a union being in compliance in one circuit but decomplied in another

solely because of a disagreement between the courts of appeal should be settled by this Court.

(b) The decision appears to be in conflict also with earlier holdings in the same circuit (*NLRB* v. *Sharples Chemical Co.*, 209 F. 2d 645; *NLRB* v. *Wiltse*, 188 F. 2d 917, cert. den. 342 U. S. 859) and in the Fifth Circuit (*NLRB* v. *Vulcan Furniture Mfg. Co.*, 214 F. 2d 369) which rejected as disruptive and unworkable the notion that the truth or falsity of affidavits predicating a union's compliance status could be attacked collaterally at the instance of an employer in an unfair labor practice proceeding.

2. The question presented is important to the administration of the Labor Management Relations Act, 1947. Indeed, the majority below gave as one of its reasons for refusing to await the outcome of the Gold appeal, the desirability of obtaining an early settlement of the question by this Court. "We * * * consider it inadvisable to 'freeze' this proceeding for an unreasonable length of time * * * which would in the meantime prevent a possible review by the Supreme Court if so desired by one of the parties." (226 F. 2d, at p. 199.)

3. The decision below is unjustified by the legislative history of § 9(h), erroneously construes the statute, violates fundamental legal principles, threatens the stability of labor agreements and relationships, and imposes serious injury upon innocent persons and organizations, in summary, as follows:

(a) The legislative history shows that Congress intended that the sole sanction for filing a false non-Communist affidavit should be punishment for the offending affiant. It rejected union decompliance as neither a practical nor a suitable sanction. 2 *Legislative History, Labor Management Relations Act*, 1947, pp. 1547, 1625, Congressional Record, Senate, June 5, 1947, p. 6604, June

12, 1947, p. 7002; Cf. H. R. 3020, 80th Cong. 1st Sess., 1 *Legislative History*, p. 190. See also *Matter of American Seating Co.*, 85 NLRB 269; *Matter of Alpert and Alpert*, 92 NLRB 806; *Matter of Craddock-Terry Shoe Corp.*, 76 NLRB 842; *Matter of Sunbeam Corporation*, 89 NLRB 469 and 93 NLRB 1205. Cf. *NLRB* v. *Sharples Chemical Co.*, 209 F. 2d 645 (6th Cir.) and cases there cited.

(b) Even if union decompliance were a permissible sanction, current decompliance could not be imposed because of a false affidavit filed more than a year earlier. Such an affidavit is *functus officio* as far as a union's current compliance status is concerned. Cf. *NLRB* v. *Dant & Russell, Ltd.*, 344 U. S. 375.

(c) The § 9(h) affidavit is, as a matter of constitutional necessity, in the present tense; otherwise the statute would be *ex post facto* and a bill of attainder. *American Communications Association* v. *Douds*, 339 U. S. 382, at pp. 413-4. Gold's conviction on the 1950 affidavit, upon an indictment which did not question the validity of his 1951, 1952 or 1953 affidavits, cannot establish the falsity of the later affidavits.

(d) The opinion below is based upon a hostage theory of justice. Twenty-four workers in Tennessee sought to join a union of which the officers had sworn, under penalty of severe criminal sanctions, that they were not members of or affiliated to the Communist Party and which had a certificate of compliance from the Board. The ruling below penalizes them because an indictment charging falsity of an affidavit made by an officer in New York was returned more than two years later and was followed by a conviction. Since the guilt in making a false affidavit is the affiant's, it is constitutionally impermissible to penalize the victims of Lannom's unfair labor practices because of their association with the affiant in the same union. As the Court of Appeals for the District of Columbia has observed in *Farmer* v. *Fur and Leather Union*, 211 F. 2d 36:

> "To impose this penalty [of decompliance] upon the great mass of union members is as reckless as firing a shotgun into a crowd of people in an attempt to stop one who is picking their pockets."

(e) The court below erred in holding the 1950 affidavit false although the judgment of conviction is *sub judice* in an appeal involving substantial questions (Cf. *United States* v. *Valenti*, 207 F. 2d 242 [3rd Cir.] reversing 106 F. Supp. 121). It emphasized this error by extending the assumption of falsity of the 1950 affidavit into 1952. Cf. *American Communications Association* v. *Douds, supra.*

(f) The retroactive decompliance of a union because of the later-discovered falsity of an affidavit of one of its officers is potentially disastrous to the stability of labor relations. Contracts covering tens of thousands of workers were entered into by Fur and Leather and by its affiliated and constituent bodies on the basis of its then current compliance status. In larger unions contracts covering hundreds of thousands of workers would be involved. If a union's compliance is to be taken away retroactively years later because of the discovered misconduct of one of its officers, all of its contracts, if they provide for union security, have, retroactively, become unlawful. The disruptive effect of such a construction is apparent.

4. The decision below denies full faith and credit to a decision of a court of competent jurisdiction rendered in an action between the parties involved concerning a status established and maintained and, in a sense, having its domicile within the District of Columbia, which the courts of that district, in holdings twice denied review by this Court, have held is not impaired by the falsity, real or alleged, of the affidavits.

Unless the doctrine of *res judicata* is applied, any proceeding before the Board is subject to endless delays while an employer raises issues not only concerning the

falsity of the non-Communist affidavits required by section 9(h), but of the financial and other data required by section 9(f) and (g). Cf. *NLRB* v. *Vulcan Furniture Mfg. Co.*, 214 F. 2d 369 (5th Cir.); *NLRB* v. *Wiltse*, 188 F. 2d 917 (6th Cir.). If Lannom is free to litigate whether Gold's affidavits were false, every other employer is also free to do so, for there is no reason why another employer should be bound by Lannom's success or failure in this respect. Unfair labor proceedings would therefore be devoted to litigating and relitigating, not whether an unfair labor practice has been committed, but whether the compliance affidavits, reports and records, past or present, are true or false; and no employer except the particular employer would ever be bound by the outcome. Cf. *NLRB* v. *Coca Cola Bottling Co.*, — U. S. —, Oct. Term, 1955, No. 79, decided February 27, 1956.

CONCLUSION

The writ of certiorari should be issued and the order below reversed.

March 1, 1956.

Respectfully submitted,

HAROLD I. CAMMER,
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New York 16, New York,
Attorney for Petitioner.

APPENDIX A

Order Appealed From

Order Sustaining Motion to Dismiss

(Filed October 6, 1955)

On Petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the motion of respondent to dismiss the petition for enforcement, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the said motion be and is hereby sustained.

APPENDIX B

Opinions in Court of Appeals

No. 12328

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ON PETITION for Enforcement of an Order of the National Labor Relations Board.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LANNOM MANUFACTURING COMPANY,

Respondent.

Decided October 6, 1955.

Before SIMONS, Chief Judge; MILLER and STEWART, Circuit Judges.

MILLER, Circuit Judge. The National Labor Relations Board has filed a petition seeking enforcement of its unfair labor practice order heretofore issued against the respondent, Lannom Manufacturing Company. The respondent employer has moved to dismiss the petition. The case is before us on the motion only, not on the merits.

In support of its motion, the respondent alleges that the charging union, International Fur and Leather Workers' Union, at the time the Board issued the complaint and

continuously thereafter, was not in compliance with Sec. 159(h), Title 29, U. S. Code, which requires the filing of non-Communist affidavits, because Ben Gold, its president, was at all times material affiliated with the Communist Party, that his affidavit to the contrary was false, and that he had been convicted of perjury for having filed such false affidavit with the Board.

The Board was advised after filing its petition for enforcement that respondent intended to challenge the compliance status of the charging union, and in order to have the pertinent facts before the Court, filed a supplemental petition for enforcement, to which the motion to dismiss was subsequently directed, setting out the following facts, about which there is no dispute.

The original charge instituting the proceeding in this case was filed by the International Fur and Leather Workers' Union on April 18, 1951. The complaint issued February 27, 1952.

Beginning in August 1950 and annually thereafter the Union filed non-Communist affidavits executed by its officers pursuant to Section 9(h) of the Act, Sec. 159(h), Title 29, U. S. Code. These included annual affidavits of Ben Gold, president of the Union. The first Gold affidavit, dated August 29, 1950, was filed on or about August 30, 1950. In reliance on these affidavits the Board deemed the Union to be in compliance with Section 9(h) for the period following August 30, 1950, and including February 27, 1952, the date of the complaint.

On or about August 28, 1953, an indictment under Sec. 1001, Title 18, U. S. Code was returned against Gold in the District Court for the District of Columbia charging that the non-Communist affidavit which he had filed with the Board on August 30, 1950 was false. On April 30, 1954, this criminal proceeding culminated in his conviction. An appeal is now pending in the Court of Appeals.

Appendix B

Considerable litigation in the District of Columbia has arisen out of the foregoing situation, briefly summarized as follows:

On December 19, 1952, the Board called on Gold and certain officers of other unions for a reaffirmation of their affidavits previously filed in 1949 through 1952. This was prompted by a presentment handed up by a grand jury in the U. S. District Court for the Southern District of New York, which reported that a number of officers of unions had appeared before the grand jury, and while identifying the affidavits filed by them with the Board, had pleaded their constitutional privilege with respect to the truth or falsity of such affidavits. The unions brought suit in the District Court to enjoin the Board from conducting such an inquiry on the ground that it was beyond the Board's authority under the Act. The District Court upheld this contention and on January 27, 1953 issued the injunction. *United Electrical Workers, et al.* v. *Herzog, et al.*, 110 F. Supp. 220. The Court of Appeals affirmed. *Farmer, et al.* v. *United Electrical Workers, et al.*, 211 F. (2d) 36, cert. denied, 347 U. S. 943.

Following the return of the indictment on August 28, 1953, the Board on October 23, 1953 promulgated a Statement of Policy with respect to representation proceedings involving unions which had officers under indictment for false non-Communist affidavits. The Statement of Policy provided for the withholding of certification of the union as bargaining representative pending the outcome of the indictment. Pursuant to the Statement of Policy the Board refused to process representation petitions of the International Fur and Leather Workers Union. The Union sought an injunction against the enforcement of the Statement of Policy and the District Court on November 19, 1953 issued a preliminary injunction to that effect. *International Fur & Leather Workers Union* v. *Farmer*, 117 F. Supp. 35. A

stay pending appeal was denied by the Court of Appeals on December 4, 1953, which also on July 2, 1954 dismissed the appeal as moot because of the intervening conviction of Gold and the filing of another action, referred to below, based on the conviction of Gold instead of the indictment.

Following Gold's conviction on April 30, 1954, after which he was reelected as President of the Union, and following a show-cause order, the Board on May 28, 1954 issued a Determination and Order declaring its compliance letter to the Union on June 11, 1953 to be of no force and effect, that the Union was not in compliance, and that Gold's affidavit of May 11, 1954 submitted for a further twelve months compliance period be rejected "in the interests of protecting the integrity of the Board's processes and of effectuating the policies and purposes of Section 9(h) of the Act." The Union thereupon sought and on July 23, 1954 obtained from the District Court a preliminary injunction enjoining the Board from "Revoking, suspending or restricting the compliance status" of the Union and "Taking or refusing to take any action" by reason of Gold's conviction for having filed the false affidavit. Case unreported. On September 9, 1954 the Court of Appeals denied a stay pending appeal, and on February 15, 1955 affirmed the judgment of the District Court. *Farmer* v. *International Fur & Leather Workers Union,* 221 F. (2d) 862.

In the foregoing litigation the Court of Appeals for the District of Columbia has taken the position that the function of the Board with respect to the affidavits required by the Act are administrative only, with no authority to inquire as to the truth or falsity of the affidavits; that the Board has no authority under the Act to deprive the Union of its compliance status under Sec. 9(h) if the affidavits have been filed; that the Act imposes a criminal

penalty for filing a false affidavit which in the opinion of Congress was a sufficient deterrent to false swearing by union officers; and that there is nothing in the Act or in its legislative history to indicate that Congress meant to go further and impose the drastic penalty of excluding a union from the Act's benefits because one of its officers filed a false affidavit, even though the membership of the union was aware of its falsity. See also; *Aerovox Corp.* v. *N. L. R. B.*, 211 F. (2d) 640, C. A. D. C.

As indicated by the foregoing recital of the actions of the Board, the Board does not agree with this construction of the Act. However, in view of the injunction issued against it it felt compelled to file the present enforcement proceeding. It has filed a Memorandum giving the Court the benefit of its view that this Court is empowered in this proceeding to decide that Gold's conviction invalidates the validity of the complaint. The International Fur and Leather Workers Union was granted leave to intervene and has filed a brief in opposition to the motion to dismiss.

We have heretofore indicated disagreement with the construction given to the Act by the foregoing cases. *N. L. R. B.* v. *Sharples Chemicals, Inc.*, 209 F. (2d) 645, 650, C. A. 6th; *N. L. R. B.* v. *Wiltse*, 188 F. (2d) 917, C. A. 6th. We held in those cases that a factual issue of compliance could not be raised and litigated by a respondent in an unfair labor practice proceeding, but expressed the view that authority to determine compliance or non-compliance on the part of the charging union existed in the Board and that such determination could be made by it through separate administrative proceedings. Reference was made in the *Sharples* case to the elaborate administrative structure established and used by the Board following the enactment of the Labor Management Relations Act of 1947 for the purpose of determining prior to the issuance of a complaint that the charging union was in

compliance; see also: *N. L. R. B.* v. *Greensboro Coca Cola Bottling Co.*, 180 F. (2d) 840, Note 1, p. 844, C. A. 4th; *Law* v. *N. L. R. B.*, 192 F. (2d) 236, 238, C. A. 10th; and to the recognition and apparent approval by the Supreme Court of such administrative proceedings. *N. L. R. B.* v. *Highland Park Manufacturing Co.*, 341 U. S. 322, at p. 325. The views expressed in *N. L. R. B.* v. *Sharples, supra,* have since received approval in *American Rubber Products Corp.* v. *N. L. R. B.*, 214 F. (2d) 47, 55, C. A. 7th, and *N. L. R. B.* v. *Vulcan Furniture Mfg. Corp.*, 214 F. (2d) 369, 371, C. A. 5th, cert. denied, 348 U. S. 873. For the reasons stated in *N. L. R. B.* v. *Sharples Chemicals, Inc., supra, and N. L. R. B.* v. *Vulcan Furniture Mfg. Corp., supra,* we adhere to the view heretofore expressed by us.

Where compliance involves a question of law arising out of established or undisputed facts, it appears settled that the Court in an enforcement proceeding has the authority to determine if the charging union is in compliance. *N. L. R. B.* v. *Highland Park Mfg. Co., supra,* 341 U. S. at p. 325-326. In that case the Supreme Court held that the Court of Appeals was right in overruling the Board and determining upon undisputed facts that the Board could not entertain the complaint, saying: "We think . . . that an issue of law of this kind, which goes to the heart of the validity of the proceedings on which the order is based, is open to inquiry by the courts when they are asked to lend their enforcement powers to an administrative tribunal."

In *N. L. R. B.* v. *Dant,* 344 U. S. 375, the legal effect of affidavits filed by union officers was successfully challenged in an enforcement proceeding in the Court of Appeals. Although the Supreme Court reversed the case on its merits, no question was raised about the authority of the Court to determine non-compliance where a factual question was not involved. Prior to these rulings by the

Supreme Court, the Court of Appeals for the Fifth Circuit had indicated, without deciding, that if it was made to appear to it by clear and positive proof that the Board has taken jurisdiction of a charge by a union which has not complied with Sec. 9(h) of the Act, it would not enforce the Board's order. *N. L. R. B.* v. *Red Rock Co.*, 187 F. (2d) 76, 78, C. A. 5th, cert. denied, 341 U. S. 950.

In the present case, as the record now stands, there is no factual issue about the falsity of Gold's 1950 affidavit. A jury has so found. We see no reason why this Court can not, as a matter of law, give to that conviction the proper legal effect which should follow from it. As stated in *N. L. R. B.* v. *Vulcan Furniture Mfg. Corp., supra,* what purports to be an affidavit is now merely a piece of paper evidencing false swearing. Certainly this Court is not required to blindly accept the form and ignore the realities. Irrespective of a possible lack of statutory authority in the Board, which is an administrative agency created by a statute and deriving its authority from that statute, to investigate the truth or falsity of affidavits filed with it, it would seem to be a fundamental principle that a court whose jurisdiction is invoked by a petitioner can consider the legal effect of undisputed facts placed before it in the record in determining whether the petitioner is entitled to the relief sought. There is no doubt but that the legal effect of non-compliance with Sec. 9(h) of the Act is a bar to enforcement proceedings in the Courts. *N. L. R. B.* v. *Highland Park Mfg. Co., supra; N. L. R. B.* v. *Dant,* 344 U. S. 375; *N. L. R. B.* v. *Sharples Chemicals, Inc., supra,* 209 F. (2d) at p. 650, C. A. 6th. "It would be strange indeed if the courts were compelled to enforce without inquiry an order which could only result from proceedings that, under the admitted facts, the Board was forbidden to conduct." *N. L. R. B.* v. *Highland Park Mfg. Co., supra,*

341 U. S. at p. 325. Such authority in the court effectuates rather than obstructs the plain congressional purpose to "wholly eradicate and bar from leadership in the American labor movement, at each and every level, adherents to the Communist Party and believers in the unconstitutional overthrow of our government." *N. L. R. B.* v. *Highland Park Mfg. Co., supra,* 341 U. S. at p. 325. Nor does it conflict with the congressional purpose, referred to by us in *N. L. R. B.* v. *Wiltsie, supra* and *N. L. R. B.* v. *Sharples Chemicals, Inc., supra,* of confining the evidence in unfair labor practice proceedings to the merits of the case in order to avoid delays resulting from the trial of collateral issues and to enable the Board to carry out its real function of deciding unfair labor practice cases and determining bargaining representatives. No trial of such a collateral issue is here involved. In our opinion, as a matter of law, the 1950 affidavit of Gold and his subsequent conviction affirmatively show on the present record in this case a lack of compliance on the part of the charging union on August 30, 1950 and for such time thereafter as such conditions continued to exist.

The Union contends that since the present complaint was issued on February 27, 1952, compliance is not based on the August 30, 1950 affidavit, but on the affidavit of Gold filed a year later, approximately in August, 1951, and that there is no showing that the August 1951 affidavit is false. We find little merit in this contention, technical at its best. Compliance or non-compliance is based on whether Gold was a member of the Communist Party on February 27, 1952. It is an established fact that he was a member of the Communist Party on August 30, 1950. The nature and fundamental characteristics of the Communist Party have received considerable judicial consideration. In his separate opinion in *American Communications Association* v. *Douds,* 339 U. S. 382, Justice Jackson pointed

out (p. 432) the differences between the Communist Party and the major political parties in the United States, that membership in it is totally different from membership in the usual political party, and that *inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party.* He wrote: "The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that the identification can only be made by officers of the Party who hold the code. Moreover, each pledges unconditional obedience to party authority. . . . For any deviation from the party line they are purged and excluded." See also similar expressions of views by Chief Justice Vinson, Justice Frankfurter and Justice Jackson in *Dennis* v. *United States,* 341 U. S. 494, at pages 498, 547 and 564 respectively. Chief Judge Simons of this Court has previously had occasion to call attention to these same characteristics. *Albertson* v. *Millard,* 106 F. Supp. 635, 643, E. D. Mich. In the absence of a showing to the contrary, the reasonable presumption would be a continuing membership in such an organization rather than a withdrawal from the membership ranks. Considering the falsity of the 1950 affidavit and the nature of the Communist Party, we do not regard the renewal affidavit in 1951, unsupported by any alleged change in the factual situation, as a sufficient showing to the contrary. In *Hupman* v. *United States,* 219 F. (2d) 243, 248, C. A. 6th, we recognized the probability and possibility of a change of allegiance or affiliation on the part of a member of the Party, particularly if the proof of status is confined to a time remote from the date of the offense charged, but rejected the contention that membership in the Communist Party on a certain day could be

proved only by evidence of what happened or transpired on that particular day.

It also appears that the Board, by its Determination and Order of May 28, 1954 found that the Union was not at that time in compliance with Sec. 9(h) of the Act. Although the District Court enjoined the Board from revoking the compliance status of the Union by reason of such finding, the injunction does not run against the respondent herein, who was not a party to that action, and does not render the present proceeding *res judicata*. *Postal Telegraph Cable Co.* v. *City of Newport*, 247 U. S. 464, 476; *Swetland* v. *Curry*, 188 F. (2d) 841, 843, C. A. 6th. Nor do we believe that it prevents the respondent from taking the position in this Court that such a finding was made by the Board and urging upon us that we give to it the legal effect which in our opinion results therefrom, although respectfully differing form the legal conclusions reached in another circuit.

This case is complicated by the fact that an appeal on the part of Gold is pending in the Court of Appeals for the District of Columbia from the judgment of the District Court. It is indefinite when that litigation will end, considering the possibility of further proceedings in the Supreme Court in the event of affirmance, and the possibility of a new trial in the event of a reversal. We realize that the ultimate termination of the criminal proceedings in the District of Columbia may present a different factual situation from what is now before us, but consider it inadvisable to "freeze" this proceeding for an unreasonable length of time awaiting such termination, which would in the meantime prevent a possible review by the Supreme Court if so desired by one of the parties. We are accordingly ruling on the motion on the basis of the record as it presently stands.

Respondent's motion to dismiss the petition for enforcement is sustained.

Appendix B

STEWART, Circuit Judge, dissenting.

A court of competent jurisdiction has found that Gold's affidavit of August 30, 1950, was false. The critical date as to compliance with § 9(h) of the National Labor Relations Act as amended was the date of issuance of the Board's complaint. *N. L. R. B.* v. *Dant,* 344 U. S. 375. If the complaint had issued during the twelve month period that this false affidavit was in effect, the question before us would be clear cut. That, however, is not the case.

In August of 1951 Gold filed a new non-Communist affidavit, and it was during the effective period of that affidavit that the complaint in this case issued. No court has found that affidavit to be false. It is true that the Board found in 1954 that the Union was not at that time in compliance with § 9(h). Assuming the Board had power to make such a finding, and assuming further that it be considered a finding that the 1951 affidavit was false, it must, I should think, be supported, like any Board finding, by substantial evidence, considering the record as a whole. We have no such record before us. Indeed, it appears that the question of the truth or falsity of the 1951 affidavit has never been heard on the merits.[1]

In *American Communications Assn.* v. *Douds,* 339 U. S. 382, 414, the opinion in chief, rejecting the claim that § 9(h) was a bill of attainder, emphasized that "members of those groups identified in § 9(h) are free to serve as union officers if at any time they renounce the allegiances which constituted a bar to signing the affidavit in the past. Past conduct, actual or threatened by their previous ad-

[1] The Board has in effect been enjoined from holding such a hearing.

herence to affiliations and beliefs mentioned in § 9(h), is not a bar to resumption of the position." The conclusion reached in the prevailing opinion seems to me to impose an improper limitation upon Chief Justice Vinson's language.

A jury has found that in 1950 Gold was both a Communist and a liar, to put it bluntly. Yet to indulge in the presumption that he was therefore guilty of committing a criminal offense a year later in filing the 1951 affidavit is further than I can go on the record before us.

For the reasons outlined, I am unable to concur in the views of my colleagues, ably expressed by Judge Miller.

No. 7[illegible]

SUPREME COURT OF THE UNITED STATES

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, A SUBORDINATE OF MISSOURI TO INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, *Petitioner-Intervenor*,

v.

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY,
Respondents

REPLY BRIEF OF RESPONDENT, LANNOM MANUFACTURING COMPANY

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SUPREME COURT OF THE UNITED STATES

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICAN, AFL-CIO, AS SUCCESSOR BY MERGER TO INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, *Petitioner-Intervenor,*

v.

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY,
Respondents

REPLY BRIEF OF RESPONDENT, LANNOM MANUFACTURING COMPANY

Respondents' Statement of the Case

On or about February 15, 1951, this Respondent reduced its working force due to the shortage of raw materials brought about by governmental control. The petitioning union filed a charge with the National Labor Relations Board on April 18, 1951, alleging that this Respondent was guilty of unfair labor practices as set out in Section 8 of the National Labor Relations Act. Several amendments were filed to the charge and a complaint was issued by the Board on February 27, 1952.

Ben Gold, former President of the charging union, filed his affidavit as required under the Act on or about August 29, 1950, and based upon this affidavit, the petitioning union was held by the Board to be in compliance.

The original charge was filed on April 18, 1951 and the

first amended charge was filed on June 18, 1951, the second amended charge was filed on November 13, 1951, and a third amended charge was filed on February 18, 1952. The Board treated the charge as one charge. This was in conformity with the Board's general theory that amendments relate back to, and become a part of the original charge. *NLRB* v. *Osbrink,* 218F (2D) 241.

The original charge and the first amendment were filed during the period of August 1950 to August 1951 while Gold's first affidavit was in effect. The second and third amendments were filed during the effectiveness of the second affidavit, but all of the matters and things alleged in said amended charges occurred more than six months prior to the filing dates of the second and third amendments to the charge and, therefore, said amended charges cannot stand as separate and independent charges because of the six month limitation contained in Section 10 of the Act.

Although the complaint was not issued until February 27, 1952, the complaint, as a matter of law, must be predicated upon a charge filed within six months of the alleged events. It necessarily follows, therefore, that the entire proceeding of the Board, of necessity, was predicated on the compliance status of the charging union during the effective period of Gold's first affidavit which was the affidavit made the basis of his criminal conviction, which conviction has now been affirmed by the Court of Appeals for the District of Columbia.

In addition to Mr. Ben Gold having filed a false and perjured affidavit, the Respondent in this case at the hearing before the Board was prepared to prove that there was in fact an officer of the charging Union who had not filed the affidavit as required by Section 9(h) of the Act.

Counsel for the Board and counsel for Respondent entered into a stipulation in lieu of calling the witness and stipulated that the witness would testify that:

"A Mr. Irving Potash, at the meeting in June 1950, declined to surrender his card as a member of the communist party and prior to that time had been a vice president of this union, and his activities were to supervise and in fact run and control the New York Furriers Joint Board. Rather than surrender his communist party at that meeting he gave up his title of vice president, but that he retained his same job and performed the same duties; that he had been performing prior to giving up his title as a vice president; . . . . . .

Now, I understand that Mr. Hamilton has agreed to stipulate that he would so testify, but does not agree, of course, as to the facts and he is objecting to the relevancy and materiality and competency of the testimony if actually offered. Now is that stipulation correct?

Mr. Hamilton: That is correct. General Counsel is willing to stipulate that if this witness were called, he would testify as outlined by Mr. Harwood, but by entering into the stipulation General Counsel is not waiving any objections which he would and does make as to the materiality, relevancy and competency, admissibility and anything else on this testimony.

Mr. Harwood: I would like to supplement one thing and say that Mr. Irving Potash who was referred to in the stipulation was one of the eleven communists who was a defendant in the rather notorious trial before Judge Medina and was convicted and is now serving time in the penitentiary.

Trial Examiner Wilson: All right. That stipulation will be received."

Counter Statement of Questions Presented

1. Whether a Court of Appeals must entertain a petition for enforcement of an order of the National Labor Relations Board when the *petition* shows on its fact that the

charging Union was not in compliance with the requirements of Section 9(h) of the Labor Management Relations Act at the time the unfair labor practice charge was filed, because the President of the Union was guilty of perjury in signing the affidavit required by said Section. Respondent insists that the answer should be "no".

2. Whether a Court of Appeals must entertain a petition for enforcement of an order of the National Labor Relations Board when the *record* shows that the charging Union was not in compliance with the requirements of Section 9(h) of the Labor Management Relations Act at the time the unfair labor practice charge was filed, because a former Vice President had refused to sign the affidavit required by said Section but continued to perform the duties of Vice President. Respondent insists that the answer should be "no".

Reasons for Denying the Writ

In addition to the reasons so ably presented in the opinion of the Court of Appeals for the Sixth Circuit, this Respondent insists that there are two other grounds which are sound reasons for sustaining Respondent's motion to dismiss.

I

The dissenting opinion of Judge Stuart in the Court of Appeals is based wholly on the fact that the complaint was issued during a period subsequent to the effective date of the 1950 affidavit which was the basis of Gold's conviction. Judge Stuart pointed out that if the complaint had issued during the 12 month period that this false affidavit was in effect, the question would be clear-cut.

The original charge in the cause was filed on April 18, 1951. This was clearly during the effective period of Gold's 1950 affidavit. An amended charge was filed on

June 18, 1951, still within the period of the 1950 affidavit. A second amended charge was filed November 19, 1951 and a third amended charge was filed on February 18, 1952.

The second amended charge was filed during the period of Gold's subsequent affidavit but was filed more than six months after the occurrence of the events alleged as unfair labor practices. The same is true of the third amended charge.

The second and third amended charges, filed during the effective period of Gold's second affidavit, cannot be treated as original charges because they were filed more than six months after the occurrence of the events alleged to be unfair labor practices.

Of necessity, therefore, these charges had to be received under the relating back theory which has been approved by the Courts. The Board itself treated the amended charges as becoming parts of the original charge which was timely filed.

It, therefore, follows that the complaint which was issued on February 27, 1952, of necessity, was predicated upon the original charge, as amended, otherwise the complaint could not issue because of the six month limitation contained in Section 10(b) of the Act. With the foregoing in mind, it is quite clear that this entire proceeding must of necessity be predicated upon the compliance status of the charging union during the effective period of Gold's first affidavit which was the affidavit upon which his conviction was based.

II

The charging Union was not in compliance for another entirely different reason. The records show that Irving Potash was exercising the duties of an officer but had not in fact filed the required affidavit.

In the case of *NLRB* v. *Coca Cola Bottling Company*, decided by this Court on February 27, 1956, the Court

clearly held that a Respondent in an unfair labor practice case is entitled to show that certain officers of the charging union have not filed the affidavit required in Section 9(h) of the Act. The record in this case, as hereinabove shown, without dispute, shows that one of the most notorious communists in the United States, Irving Potash, had not filed the required affidavit. Potash had been a vice president of the charging union but was such a rabid communist that he refused to surrender his membership in the communist party and in an effort to circumvent the requirements of Section 9(h) of the Act, merely surrendered his title as vice president but retained all of his duties with the charging union without change. Under the circumstances, the charging union was not in compliance with the filing requirements of the Act.

The petition endeavors to create a conflict between the decision of the Sixth Circuit in the case and the decisions of the Court of Appeals for the District of Columbia. There is no such conflict because the litigation before the Courts for the District of Columbia involved the future compliance status of the Fur and Leather Workers Union. Furthermore, the Courts for the District of Columbia merely held that the NLRB, *an administrative agency,* could not deny the compliance status of the Union because of Gold's conviction for filing a false affidavit in 1950. This is not at all inconsistent with the *judiciary* refusing to grant equitable relief to the charging Union, under the facts of this case. As pointed out above, if the charging union was not in compliance from August 1950 to August 1951, this entire proceeding is prohibited by the expressed provisions of the Act.

A large part of the petition argues the question of future compliance of the charging union rather than with the compliance status of the Union during the period of time involved.

Conclusion

Respondent insists that the Court should deny the petition.

Respectfully submitted,

CECIL SIMS,
JUDSON HARWOOD,
Attorneys for Lannom Manufacturing Company.

APPENDIX

Portions of Transcript of Record Relied Upon by Respondent

(R. 51) Mr. Harwood: If the Examiner please, Mr. Hamilton has (R. 52) very kindly consented to a stipulation that will save the Examiner a lot of time and save the Respondent not only time but expense. The Respondent is prepared to offer as a witness, A. H. Raskin, a Reporter for the New York Times, who if called to testify would testify in substance that Mr. Ben Gold, the President of the charging union, the International Fur and Leather Workers Union, has been a member of the communist party, was a member of the communist party for some 25 years and that he readily admitted this in his testimony before a Committee in Congress and during that testimony which was in September 1948, Mr. Gold stated, not only admitted that he was a communist but stated that he would never surrender his communist beliefs and that on or about June 30, 1950, the International Fur and Leather Workers Union, through its central council, or whatever it may be, instructed all of its officers to sign non-communist affidavits in order to comply with the Taft Hartley Act. Mr. Gold on or about August 28, 1950, signed such an affidavit, but at the time he signed it, he made a press release, wherein he stated that his action "was taken for the purpose of technical compliance with the Taft Hartley Law and that it did not involve any renunciation of his belief in communist principals."

A Mr. Irving Potash, at the meeting in June 1950, declined to surrender his card as a member of the communist party and prior to that time had been a vice president of this union, and his activities were to (R. 53) supervise and in fact run and control the New York Furriers Joint

Board. Rather than surrender his communist party, at that meeting he gave up his title of vice-president, but that he retained his same job and performed the same duties; that he had been performing prior to giving up his title as a vice president; and this witness will further testify that Mr. Gold since August 28, 1950, on at least one occasion, had actually attended a meeting of a group of known communists in New York City. This witness is a newspaper reporter and he is available to testify.

Now, I understand that Mr. Hamilton has agreed to stipulate that he would so testify, but does not agree, of course, as to the facts and he (R. 53) is objecting to the relevancy and materiality and competency of the testimony if actually offered. Now, is that stipulation correct?

Mr. Hamilton: That is correct. General Counsel is willing to stipulate that if this witness were called, he would testify as outlined by Mr. Harwood, but by entering into the stipulation General Counsel is not waiving any objections which he would and does make as to the materiality, relevancy and competency, admissibility and anything else on this testimony.

Mr. Harwood: I would like to supplement one thing and say that Mr. Irving Potash who was referred to in the stipulation was one of the 11 communists who was a defendant in the rather notorious trial before Judge (R. 54) Medina and was convicted and is now serving time in the penitentiary.

Trial Examiner Wilson: All right. That stipulation will be received.

• • • • •

(R. 56) Mr. Harwood: . . . . I would like to go one step further and I believe it will be agreeable—that the Board in making these determinations and considering this matter had available the press release by Mr. Gold at the time

he executed his affidavit as I have stated. Since this matter was published in the newspapers throughout the United States and was given wide publicity.

Mr. Hamilton: Well, I can't stipulate for sure that that is so. I am reasonably certain that it was, because it was a matter of great publicity at the time.

Mr. Harwood: Well, you will stipulate then that it was published widely throughout the United States and went out over various press service wires to the newspapers.

Mr. Hamilton: I will so stipulate.

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STATUTE:

National Labor Relations Act, as amended, 61 Stat. 136, 65 Stat. 601, 29 U.S.C. 151, *et. seq.*:
Section 9(h) 3

MISCELLANEOUS:

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 723

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as successor by merger to INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD and LANNOM MANUFACTURING COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. The Government does not oppose the granting of certiorari with respect to the question, encompassed by questions 1, 2, and 3 of the petition (Pet. 2-3), whether a union is rendered ineligible to receive benefits under the National Labor Relations Act when one of its officers has been convicted of filing a false non-Communist affidavit.

The National Labor Relations Board has uniformly held that such a union may be declared ineligible to invoke the processes of the Act. The Court of Appeals for the District of Columbia Circuit, however, has consistently held that while the Act imposes a criminal penalty for filing a false affidavit, it does not exclude the union from the benefits of the Act, even though the affidavits filed by its officers are in fact false. *Farmer* v. *United Electrical, Radio & Machine Workers,* 211 F. 2d 36, certiorari denied, 347 U.S. 943; *Farmer* v. *International Fur and Leather Workers Union,* 221 F. 2d 862; *International Union of Mine, Mill & Smelter Workers* v. *Farmer,* 226 F. 2d 780.[1] The court below disagrees with this construction.

The importance of a definitive determination of this question in the administration of the Act is emphasized by the history of the litigation leading up to the instant decision, as set forth in the petition (Pet. 5-8). Thus, the Court of Appeals for the District of Columbia Circuit affirmed a preliminary injunction, issued by the District Court for the District of Columbia on July 23, 1954, enjoining the Board from declaring the Union out of compliance with Section 9(h)

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[1] The Board contemplates filing a petition for a writ of certiorari in the *Mine Mill* case, cited above, but has deferred doing so because of a motion pending in the court of appeals for clarification of its judgment. On January 31, 1956, the Chief Justice granted an extension of time until April 7, 1956, in which to file such a petition. On March 15, 1956, the District of Columbia Circuit clarified and amended its judgment in the case.

of the Act,[2] because of the conviction of its president, Gold, for filing a false non-Communist affidavit. *Farmer* v. *International Fur and Leather Workers Union*, 221 F. 2d 862. When the Board, in obedience to this injunction, petitioned the Court of Appeals for the Sixth Circuit for enforcement of its unfair labor practice order in the instant case against the Lannom Manufacturing Company, that court dismissed the petition on the ground that the Board's complaint and order had been entered on a charge filed by a non-complying union. The court's finding of non-compliance was based upon the conviction of the union's president, Gold, for having filed a false non-Communist affidavit under Section 9(h) of the Act.[3] Since the official residence of the Board is the District of Columbia and injunctive proceedings against the Board may properly be brought only in the District, this anomaly will continue to exist or arise in the future until the question has been finally determined by this Court.

2. Petitioner's question 4 (Pet. 3) presents no issue appropriate for review by this Court. The decision of the Court of Appeals for the District of Columbia Circuit in the *Fur Workers* case, *supra*, was not *res judicata* in the instant case, since Lannom, against whom the Board's unfair

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[2] 61 Stat. 136, 146, 65 Stat. 601, 602, 29 U.S.C. 159(h).

[3] On March 9, 1956, the Court of Appeals for the District of Columbia Circuit by an evenly divided vote affirmed the conviction.

labor practice order in the instant case runs, was not a party to the District of Columbia action (*Postal Telegraph Cable Co.* v. *Newport,* 247 U.S. 464, 476; *Privett* v. *United States,* 256 U.S. 201, 203-204; Rule 65(d), Federal Rules of Civil Procedure) and the preliminary injunction issued by the District Court of the District of Columbia and affirmed by the Court of Appeals, was not a final judgment (*Merriam* v. *Saalfield,* 241 U.S. 22, 28). Nor does the full faith and credit clause of the Constitution have any application here "since neither of the courts concerned was a state court". *Baldwin* v. *Traveling Men's Assn.,* 283 U.S. 522, 524. Accordingly, the petition for a writ of certiorari should be denied so far as it relates to question 4.

Respectfully submitted,

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March, 1956

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IN THE

Supreme Court of the United States

October Term, 1956

No. 40

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, ETC.,
Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE PETITIONER

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Supreme Court of the United States

October Term, 1956

No. 40

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, ETC.,

Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD and LANNOM MANUFACTURING COMPANY.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE PETITIONER

Opinion Below

The opinions in the Court of Appeals (R. 13-22) are reported at 226 F. 2d 194.

Jurisdiction

The order of the Court of Appeals was entered October 6, 1955 (R. 12). On December 19, 1955, by order of Mr. Justice Reed, the time to file a petition for a writ of certiorari was extended to March 3, 1956 (R. 85). The petition was filed March 1 and was granted on April 23 (R. 85). The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

Questions Presented

1. Whether a labor organization may be retroactively deprived of its compliance status under the Labor Management Relations Act, 1947 because one of its officers was convicted, in 1954, of having filed, in 1950, a false affidavit under section 9(h) of the Act.

2. If so, whether the loss of compliance may be carried into 1952, when the union's compliance status was based upon a later affidavit, filed in 1951, which was not the subject of indictment or conviction.

3. Whether, even if the answers to both of the foregoing questions are affirmative, such decompliance may be effectuated while the conviction on the 1950 affidavit is still on appeal and the appeal presents substantial questions.

4. Whether the court below was not required to give effect to a judgment of the district court for the District of Columbia, entered in an action between the union and the Board, and affirmed by the Court of Appeals for that circuit, that the union's compliance status was not affected by the conviction.

Statute Involved

29 U. S. C. § 159(h) [Labor Management Relations Act, 1947, section 9(h)] provides:

> "No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the

preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illlegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits."

Statement

The order under review (R. 12), one judge dissenting, dismissed the petition of the National Labor Relations Board (R. 29-30) for enforcement of its unfair labor practice order (R. 22-29) against the respondent Lannom Manufacturing Company. The order of dismissal did not reach the merits of the Board's order; its basis was that the charging union, International Fur and Leather Workers Union (hereafter referred to as Fur and Leather), had retroactively lost its compliance status under the Labor Management Relations Act, 1947 (hereafter called the Act) because its former president, Ben Gold, had been convicted, in 1954, under 18 U. S. C. § 1001 of having filed a false non-Communist affidavit in 1950.

Petitioner is the successor by merger to Fur and Leather, the merger having been effectuated in February, 1955, after submission of the case below.

1. Fur and Leather's Compliance.

Prior to its merger with Amalgamated, Fur and Leather was an international union to which were affiliated many local unions throughout the United States. Until 1954, Ben Gold had been its president for many years (R. 10).

Since 1950 Fur and Leather had required its officers, as a condition of holding union office, to file annually, in accordance with the compliance provisions of the Act, the non-Communist affidavits provided by section 9(h) thereof. Such affidavits are effective to maintain "compliance" for one year. Annually in 1950, 1951, 1952, 1953 and 1954 these affidavits were filed by each of its officers, including Gold, and the union's compliance was continuous (R. 10).

2. The Unfair Labor Practices.

Early in 1951 Lannom discharged a number of its employees who were then attempting to organize and join a local affiliated to Fur and Leather. On charges duly filed by Fur and Leather (R. 42-46), the Board, on February 27, 1952, issued its complaint against Lannom (R. 38-41). After hearings, the Board, on March 20, 1953, issued a Decision and Order in which it found Lannom guilty of restraint and coercion of its employees in the exercise of their right to self-organization. It thereupon ordered Lannom to reinstate twenty-four workers who, it found, had been unlawfully discharged or laid off, and to cease and desist from its unfair labor practices and to post notices (R. 22-29).

3. Gold's Subsequent Indictment and Conviction.

Thereafter, in August, 1953, Gold was indicted on a charge that his 1950 affidavit was false. The indictment did not put in issue the truthfulness of the 1951, 1952 or 1953 affidavits which he had filed before the indictment and on which Fur and Leather's subsequent compliance status (and particularly its status on February 27, 1952, the date when the Board issued its complaint) was based (R. 10, 21-22).

Gold was convicted on April 30, 1954 and sentenced to one to three years. The trial court continued Gold on the same bail pending appeal, ruling that the case pre-

sented substantial issues of law and fact warranting review. An appeal to the Court of Appeals for the District of Columbia was immediately taken and the case was pending undetermined in that court at the time of the decision below (R. 20).[1]

4. The Litigation in the District of Columbia Concerning the Effect of the Indictment and Conviction Upon the Union's Compliance Status.

As a result of previous events, commencing in December, 1952, involving accusations that Gold's affidavits were false (R. 4-5), the Board, on three separate occasions, had sought to declare Fur and Leather out of compliance. In a series of resulting actions by Fur and Leather against the Board, the district court and the Court of Appeals for the District of Columbia, on each such occasion, had enjoined the Board from impairing the union's compliance status on the ground of the falsity of the affidavits, holding that the sanction against a false affidavit was a criminal one against the offending officer, not decompliance of the Union.

In *Fur and Leather Union* v. *Herzog,* 110 F. Supp. 220 (D. C., D. Col.), affd. sub nom. *Farmer* v. *Fur and Leather Union,* 211 F. 2d 36 (D. Col. Cir.) cert. den. 347 U. S. 943, the Board was permanently enjoined (R. 14) from conducting an inquiry into the truth or falsity of the Gold affidavits. Subsequently, in *Fur and Leather Union* v. *Farmer,*

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[1] Oral argument on the *Gold* appeal had been had before a panel of the court on March 28, 1955. After the order below had been made the court, on January 12, 1956, *sua sponte* set the *Gold* appeal down for rehearing *in banc* on February 9. On March 19, it affirmed the conviction by a vote of 4-4, each judge reserving the right to file a statement of his vote and his reasons. Judge Bazelon is the only judge thus far to have filed a statement; his statement shows he voted for an acquittal. A petition for a writ of certiorari to review this affirmance is now pending undetermined before this Court (No. 137, this Term).

117 F. Supp. 35 (D. C., D. Col.), stay den. Dec. 4, 1953 (No. 12347, C. A., D. Col.) cert. den. 347 U. S. 943, the Board was enjoined from impairing or suspending the union's compliance status as a result of Gold's indictment (R. 14-15). And in *Fur and Leather Union* v. *Farmer*, 34 LRRM 2493 (not officially reported) (D. C., D. Col.), affd. 221 F. 2d 862 (D. Col. Cir.), the same court, on July 23, 1954, further enjoined the Board from impairing the union's compliance status on account of Gold's conviction. This injunction (R. 8-12) was in full effect at the time of the proceedings in the Sixth Circuit, as that court acknowledged (R. 15). Nevertheless, it refused to give effect to the injunction on the ground that it disagreed with it (R. 16).

5. The Proceedings and the Ruling Below.

In obedience to the injunction, the Board filed the present enforcement petition (R. 29-30) on September 10, 1954 (R. 3). Lannom thereupon moved to dismiss, asserting that Fur and Leather was not in compliance on the grounds that the falsity of Gold's affidavit had been "continuously" "well known to all the members of the Labor Board, as well as to the general membership of the charging union" from the time it was filed, and that Gold had since been "convicted of perjury" (R. 1).[2] The Union was granted intervention for the purpose of opposing the motion to dismiss (R. 2-3).

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[2] Lannom had also sought to litigate the truthfulness of the affidavits at the unfair labor practice hearings (R. 6-7, 31-37). The Courts of Appeals which have considered this question, including the Sixth Circuit, are unanimous that this is improper. In addition to the cases in the District of Columbia circuit cited *infra* pp. 11, 12, see also *National Labor Relations Board* v. *Wiltse*, 188 F. 2d 917 (6th Cir.); *National Labor Relations Board* v. *Sharples Chemical Co.*, 209 F. 2d 645 (6th Cir.); *National Labor Relations Board* v. *Vulcan Furniture Mfg. Co.*, 217 F. 2d 369 (5th Cir.); *National Labor Relations Board* v. *Puerto Rico Food Prod. Corp.*, 232 F. 2d 515, 519-520 (1st Cir.). Cf. *National Labor Relations Board* v. *Coca Cola Bottling Company of Louisville, Inc.*, 350 U. S. 264.

The order under review sustained Lannom's motion, the majority holding that (1) the several rulings on the question by the Court of Appeals for the District of Columbia were wrong (226 F. 2nd, at p. 196, R. 16); (2) "irrespective of a possible lack of authority in the Board • • • to investigate the truth or falsity of affidavits filed with it," the court had the authority to determine non-compliance "where a factual issue was not involved" (*id.*, at p. 197, R. 17, 18); (3) a factual issue was not involved as to the falsity of either the 1950 or 1951 affidavits, except one "technical at its best", in view of "the nature and fundamental characteristics of the Communist Party" (*id.*, at 198, R. 19); therefore, "as a matter of law" Gold's membership as of February 27, 1952 (the date of issuance of the Board's complaint) was established "in the absence of a showing to the contrary" by the jury's verdict that he was a member on August 30, 1950 (*id.*, at p. 198, R. 19); (4) the pendency of Gold's appeal is immaterial[3] (*id.*, at p. 199, R. 20).

Judge Stewart dissented on the ground that the union's compliance status in February, 1952 was not based on Gold's 1950 affidavit but on his affidavit filed in August, 1951, which was not shown to be false (*id.*, at pp. 199-200, R. 21-22).

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[3] The majority said on this: "This case is complicated by the fact that an appeal on the part of Gold is pending in the Court of Appeals for the District of Columbia from the judgment of the District Court. It is indefinite when that litigation will end, considering the possibility of further proceedings in the Supreme Court in the event of affirmance, and the possibility of a new trial in the event of reversal. We realize that the ultimate termination of the criminal proceedings in the District of Columbia may present a different factual situation from what is now before us, but consider it inadvisable to 'freeze' this proceeding for an unreasonable length of time awaiting such termination, which would in the meantime prevent a possible review by the Supreme Court if so desired by one of the parties. We are accordingly ruling on the motion on the basis of the record as it presently stands."

Summary of Argument

I.

A. There is nether express nor implied power to punish a union by "decompliance" because one of its officers has been convicted of having filed a false non-Communist affidavit. Congress carefully considered various alternative sanctions (including the sanction of union decompliance) against the possibility that false affidavits might be filed under § 9(h), and then decided that the sole sanction for filing a false non-Communist affidavit should be punishment of the affiant, not victimization of the union or of its members. It therefore specifically rejected union decompliance as a practical or suitable sanction.

The Board's original administrative interpretation of the Act consistently repudiated the notion of any inherent power in this area and its rules and regulations still make the fact of filing, not the truth or falsity of the affidavit, the sole test of compliance.

The Board does not have "inherent power" to determine the conditions for compliance. This does not concern quasi-judicial or administrative functions within the Board's purview, such as the appropriateness of a bargaining unit, or of a remedy for unfair labor structures. Congress has not left it to the Board to fix the conditions for the right of access to the Board's processes; it has fixed them itself and has given the Board only the function of determining whether those conditions have been met.

By the enactment of the Communist Control Act of 1954, the Congress has reiterated its view that the Board is to have nothing to do with decompliance. By this legislation Congress established with clarity and preciseness the exclusive conditions and procedures for the decompliance of a union. This pre-emption of the field pre-

cludes any other cause or method of decompliance, and especially excludes a retroactive decompliance.

The retroactive decompliance of a union because of the later-discovered falsity of an affidavit of one of its officers is potentially disastrous to the stability of labor relations. Contracts covering tens of thousands of workers were entered into by Fur and Leather and by its affiliated and constituted bodies on the basis of its then current compliance status. In larger unions contracts covering hundreds of thousands of workers would be involved. If a union's compliance is to be taken away retroactively, years later, because of the after-discovered misconduct of one of its officers, all of its certifications are vitiated and its contracts, if they provide for union security, have, retroactively, become unlawful. The disruptive effect of such a construction is apparent.

B. The ruling below is based upon a hostage theory of justice. Under it, twenty-four workers in Tennessee who sought to join a union of which all of the officers had, under penalty of severe criminal sanctions, sworn to the non-Communist affidavits and which had a certificate of compliance from the National Labor Relations Board, are suddenly penalized because, more than three years later, one of the national officers in New York has been convicted of having filed a false affidavit. Since the guilt in making a false affidavit is the affiant's, it is constitutionally impermissible to penalize the victims of Lannom's unfair labor practices because of their association with the affiant in the same union.

II.

The § 9(h) affidavit is, as a matter of constitutional necessity, in the present tense; otherwise the statute would be *ex post facto* and a bill of attainder. *American Communications Association* v. *Douds,* 339 U. S. 382, at pp. 413-4. Gold's conviction on the 1950 affidavit, upon an

indictment which did not question the validity of his 1951, 1952 or 1953 affidavits which were then on file, cannot establish the falsity of the later affidavits.

Therefore, even if union decompliance were a permissible sanction, current decompliance could not be imposed because of a false affidavit filed more than a year earlier. Such an affidavit is *functus officio* as far as a union's current compliance status is concerned. Cf. *NLRB* v. *Dant & Russell, Ltd.*, 344 U. S. 375.

III.

The court below erred in holding that the 1950 affidavit was false although the judgment of conviction was then *sub judice* in an appeal involving substantial questions. It emphasized this error by extending the assumption of falsity of the 1950 affidavit into 1952.

IV.

The decision below denied effect to a decision of a court of competent jurisdiction rendered in an action between the union and the Board, the parties directly concerned with the compliance status established and maintained and, in a sense, having its domicile within the District of Columbia, which the courts of that district, in holdings twice denied review by this Court, have held is not impaired by the falsity, real or alleged, of the affidavits.

Unless a doctrine of *res judicata* is applied, proceedings before the Board are subject to endless delays while respondents may raise issues not only concerning the falsity of the non-Communist affidavits required by section 9(h), but of the financial and other data required by section 9(f) and (g) of the Act as well.

ARGUMENT

I.

There is neither express nor implied power to "decomply" a union because one of its officers has been convicted of having filed a false non-Communist affidavit.

A. (1) Neither the government nor the court below points to any express provision of statute which authorizes the decompliance of a union because one of its officers has been convicted of having filed a false non-Communist affidavit. No provision for decompliance of a union is to be found in the Act. The Board's position, therefore, must rest, as it does, upon an asserted "implied power to protect its processes from abuse" (Brief in *NLRB* v. *International Union of Mine, Mill and Smeltor Workers,* No. 57 this Term, p. 12). But, as was pointed out in *Farmer* v. *United Electrical Workers,* 211 F. 2d 36, cert. den. 343 U. S. 943, the contention of "inherent power" to decomply because of the falsity of an affidavit is untenable because (at p. 39):

> "The scheme of § 9(h) is clear. It imposes a criminal penalty for filing a false affidavit under § 9(h), in order to deter Communist officers from filing at all; then the failure of such an officer to file is made the touchstone for barring his union from crucial benefits under the Act, as an incentive to the membership to rid itself of such leadership. There is nothing in the Act or in its legislative history or in good sense to indicate that Congress meant to go further and impose the drastic penalty of excluding the union from the Act's benefits because its officer had deceived the union as well as the Board by filing a false affidavit."

To the same effect are *Fur Workers* v. *Farmer*, 117 F. Supp. 35 (D. C., D. Col.) affd. 211 F. 2d 36 (C. A. D. Col.) cert. den. 347 U. S. 943; *Fur Workers* v. *Farmer*, 34 LRRM 2493 (D. C. D. Col.) affd. 221 F. 2d 826 (C. A. D. Col.); *International Union of Mine, Mill and Smelter Workers* v. *Farmer, et al.*, 226 F. 2d 780 (C. A. D. Col.). Cf. *Aerovox Corp.* v. *National Labor Relations Board*, 211 F. 2d 640 (C. A. D. Col.) cert. den. 347 U. S. 968 and *National Labor Relations Board* v. *Puerto Rico Food Prod. Corp.*, 232 F. 2d 515, 519-20 (1st Cir.).

(2) The legislative history of the Act shows that Congress deliberated carefully over the sanctions to be imposed for a false affidavit. It was, of course, aware that false affidavits might be filed and it fully considered ways of investigating them and of providing sanctions therefor. It concluded that the remedy for a false affidavit should be conviction of the affiant, not punishment of the union; such a course would be "as reckless as firing a shot-gun into a crowd of people in an effort to stop one who is picking their pockets." *Farmer* v. *United Electrical Workers*, 211 F. 2d, at p. 39.

After debating various alternatives Congress decided, as stated by Senator Taft, that "an affidavit is sufficient for the Board's purposes" (*Congressional Record*, Senate, June 12, 1947, p. 7002; *2 Legislative History, Labor-Management Relations Act, 1947*, p. 1547) since "the penal provisions of section 35A of the Criminal Code [now 18 U. S. C. § 1001] * * * are made applicable to the execution of such affidavits." (*Congressional Record*, Senate, June 5, 1947, p. 6604; *2 Legislative History*, p. 1547.) Congress therefore rejected proposals which had originally been made and enacted in the House and Senate (H. R. 3020, 80th Cong., 1st Sess., *1 Legislative History*, pp. 190, 251) to make the fact of Communist leadership the test of compliance. Instead, it substituted a provision to make the fact of filing the basis of achieving the status of compliance. But it provided severe sanctions, to be administered by the

Department of Justice, against an affiant for a false filing. The last sentence of section 9(h) was amended to provide that "The provisions of Section 35A of the Criminal Code shall be applicable in respect to such affidavits" and Congress deliberately omitted from the statute any provision for the visitation of any sanction upon the union. *United Electrical Workers* v. *Herzog*, 110 F. Supp. 220, at 221 (D. C., D. Col.).

In presenting the Conference Report to the Senate, Senator Taft, the principal author of the Act, said that the criminal sanction upon the affiant had been agreed upon so that a false affidavit would not "hold up the certification of a union. But any Communist who makes a false affidavit can be sent to jail." (*Congressional Record*, Senate, June 12, 1947, p. 1627.) Answering the critics of the Act, Senator Taft pointed out that, as far as the union was concerned, it was subject to no disabilities if it elected officers who would file the affidavit. He said: "Under the amendment an affidavit is sufficient for the Board's purposes and there is no delay unless an officer of the moving union refuses to file the affidavit required" (*ibid.*, at 1625. See also *2 Legislative History*, 1542, 1547, 1627). The legislative history of the Act thus refutes a claim to inherent power to decomply.

(3) Prior to its order of December 19, 1952, (R. 4) the Board had consistently repudiated the existence of "inherent power" in this area. In *Matter of Alpert and Alpert*, 92 NLRB 806, it held that the compliance status of the West Coast Longshoremen's Union, of which Harry Bridges was President, could not be affected by his conviction of perjury for having falsely denied membership in the Communist Party. It said that:

> "In this situation, as in others already considered by the Board, persons desiring to establish falsification or fraud have recourse to the Department of Justice for a prosecution under Section 35(a) of the Criminal Code."

See also *In re Craddock-Terry Shoe Corporation,* 76 NLRB 842; *In re American Seating Company,* 85 NLRB 269; *In re Sunbeam Corp.,* 89 NLRB 469.

The Board's former chairman testified before the Senate sub-Commitee of the Committee on Labor and Public Welfare on March 18, 1952 that (italics supplied):

> "It was apparent from the outset that the NLRB's *sole* function was to make certain that the necessary persons filed these affidavits, and that, once they had done so pursuant to the rules we adopted, *we were to process their cases without inquiring into the truth or falsity of the affidavits* themselves. Where such an issue arose, the Board's *statutory duty was only to refer the affidavits to the Department of Justice* for investigation and possible prosecution for perjury under the Criminal Code. We have made 55 such referrals since 1947." *Hearings before Senate Subcommittee of the Committee on Labor and Public Welfare, Communist Domination of Unions and National Security,* p. 91.

In the same hearings the then NLRB General Counsel (George J. Bott) repeated the position stated by Chairman Herzog. Senator Humphrey, who conducted the inquiry, asked:

> "What was the intent of the Congress under your interpretation of 9(h)?"

Mr. Bott answered:

> "The intent only that the affidavits be filed and as [far as] we are concerned that the National Labor Relations Board or the General Counsel not investigate the truth or falsity of the affidavits. That is very clear" (*Hearings, ibid.,* p. 114).

See also *NLRB Fourteenth Annual Report*, p. 15; *NLRB Sixteenth Annual Report*, p. 48.

Thus the Board's Rules and Regulations make the filing of the affidavit the sole test of compliance under section 9(f). Compliance "means" filing [Board's Rules and Regulations, Series 6, as amended, Sec. 102.13] and the Board has no rules and regulations for "decompliance" of a union for a false affidavit.

(4) The questions posed by this case do not involve the exercise of the Board's quasi-judicial and administrative functions on an issue within its sphere, *e.g.*, the determination of an appropriate bargaining unit, or whether unfair labor practices have been committed and, if so, the appropriate remedy. These functions are plainly vested solely in the Board. They are, indeed, its function.

But this case involves the right of access to the Board. Congress has not vested in the Board—or in the Courts of Appeal—the right to decide who shall or shall not have access to the Board as a complying party. Congress has itself explicitly and specifically prescribed the terms for attaining a status of compliance. *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322. The Board's function in this area is therefore the administrative function of determining whether the terms fixed by Congress have been met. See *National Labor Relations Board* v. *Coca-Cola Bottling Company of Louisville, Inc.*, 350 U. S. 264. By the specific provisions of the statute, the function of administering the sanctions which Congress has provided for abuse of its terms is in the Department of Justice, not in the Board. Therefore, *National Labor Relations Board* v. *Indiana and Michigan Electric Co.*, 318 U. S. 9 and the other cases cited by the Board (pp. 13, 25 *et seq.*, Brief in No. 57, *supra*) to the effect that it may decline to submit its processes to abuse, however vitality they may have in areas within the Board's function, cannot support a claim to "inherent power" in an

area where the Congress has denied it a function. For this reason also the distinction which the Board attempts to draw from such cases as *L. P. Stewart & Bro.* v. *Bowles,* 322 U. S. 398; *Porter* v. *Warner Holding Co.,* 328 U. S. 395 (at pp. 30-31, Brief in No. 57) between a "sanction" and "other appropriate remedies" has no relevance here, for the provisions and legislative history of the Act make it clear that the Congress deliberately denied to the Board the power to provide any other remedy than the criminal sanction it had itself provided.

(5) By the enactment of the Communist Control Act of 1954, Public Law 637, 83d Cong., chapter 886, 2d Sess., Congress has reiterated its desire to exclude the Board from all functions in this area and has thereby prescribed the sole means of "decompliance". Under that law, the function of determining whether a union is Communist-controlled, and whether the membership is aware of it, is vested in the Subversive Activities Control Board [Subversive Activities Control Act of 1950, as amended, Sections 7, 13A (e) (6)]. The SACB is required to act on a verified petition of the Attorney General after a hearing on notice [*ibid.*, Section 13A (a) (b) (c) (d)]. Even then, decompliance, if ordered, is never retroactive; it is prospective only and does not take effect until the SACB order has become "final" *i.e.*, only after there has been full judicial review (*ibid.*, Section 13A (b), Section 14). By this overall legislation Congress has clearly pre-empted the whole field so as to preclude any other cause or method of decompliance. *Cf. Commonwealth of Pennsylvania* v. *Nelson,* 350 U. S. 497 and also *Bindczyck* v. *Finucane,* 342 U. S. 76; *Dice* v. *Akron, Canton & Youngstown R. R. Co.,* 342 U. S. 359; *Far East Conference* v. *United States,* 342 U. S. 570; *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U. S. 579.

(6) Furthermore, decompliance of the union is simply not a practical or a suitable sanction for conviction of an officer making a false affidavit. Under the Act, the affi-

davit has a vitality of only one year for compliance purposes. Conviction would, ordinarily, therefore occur, as here, only with regard to an affidavit which is *functus officio* for compliance purposes. Moreover, the conviction may be reversed on appeal, as the court below recognized. Cf. the reversals of convictions for false § 9(h) affidavits in *United States* v. *Valenti*, 207 F. 2d 242 (3d Cir.) and *Fisher* v. *United States*, 231 F. 2d 99 (9th Cir.).[4] As is shown in the pending petition for certiorari to review the 4-4 affirmance of Gold's conviction (No. 137, this Term) and as Judge Bazelon wrote in that case (R. 2232, No. 137) the appeal presents substantial and vital questions affecting the administration of justice. If the conviction is reversed the workers victimized by Lannom's unfair labor practices, as well as the union and all of its local unions and constituent bodies will have suffered great injury from the removal of its compliance status as the result of an erroneous conviction. And if decompliance comes only after the affirmance of the conviction, the issue is moot since the affiant thereupon goes to jail.

Moreover, the effect of decompliance in 1955 because of a false affidavit filed in 1950 is disastrous to the stability of labor relations. Contracts covering tens of thousands of workers, in hundreds of plants, were entered into by locals and constituents of the Fur and Leather Workers Union on the basis of its current compliance. In larger unions, or in the case of the AFL-CIO itself, contracts covering hundreds of thousands and even millions of

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[4] In support of its position the Board cites (Brief in No. 57, *supra*, p. 23) its action in "nullifying the union's compliance status under the Act and its outstanding certifications" because of Valenti's conviction. *In re Compliance Status of Local 80A, United Packinghouse Workers of America, CIO*, 101 NLRB 1253, and other cases cited in footnote 17 of the Board's brief. The Board does not advert to the fact that it was unable, after Valenti's conviction had been reversed, to undo the injury which it had caused the union by this unjust and unauthorized action.

workers would be involved. A union security contract with a non-complying union is unlawful and ineffective as an election bar. Act, section 8(a)(3); *In re Charles E. Hires Co.*, 85 NLRB 1208; *In re Jandel Furs*, 100 NLRB 1390; *In re San Jose Builders Co.*, 101 NLRB 1772; *In re Ward Baking Co.*, 101 NLRB 419. The Board points to nothing to show that Congress intended that if, years after the event, it were discovered that an officer of a union had deceived the union as well as the Board by a false affidavit, the union should thereupon be retroactively decomplied, and its certifications and contracts thereupon set aside and new questions concerning representation thus generated. If so, are strikes and economic sanctions which are available only to complying unions [Section 8(b)(4) (B), (C), (D); see *American Communications Association* v. *Douds*, 339 U. S. 382, 390], and which may have been engaged in by the union while in compliance, thereby rendered illegal?

Finally, the ruling below creates a powerful incentive for delay in the processing and disposition of labor board cases. If proceedings instituted on a charge by a complying union are vitiated after decision because an officer of the charging union has been subsequently convicted—in a case still on appeal—then prudence and a proper concern for the public funds should require the Board to wait until the criminal statute of limitations has run on all affidavits before it processes a case. But even this would not solve the problem for if there should be an indictment it would have to wait until there was a final judgment before it issued a complaint. And it would be wise for a Board respondent to wait, as Lannom waited, before complying with an unfair labor practice order on the chance that an officer of the charging or petitioning union may yet be indicted one, two or three years later and thereafter convicted. The question would still remain about those respondents who, in the interim have accepted the Board's

orders. Would the Board treat them less favorably than respondents who have resisted its order? Should such an employer be allowed to rescind its compliance, unreinstate its victimized workers and resume its unfair labor practices?

B. The visitation of punishment upon Fur and Leather and, more directly, upon Lannom's workers, by the ruling below imposes a hostage theory of justice which is repugnant to our laws. Since the guilt in making a false affidavit is personal to the affiant, it is constitutionally impermissible to penalize those innocent of wrongdoing merely because of their association with the affiant in the same union. See *Schneiderman* v. *United States,* 320 U. S. 118, 136; *Kotteakos* v. *United States,* 328 U. S. 750, 772; *Bridges* v. *Wixon,* 326 U. S. 135, 163 (concurring opinion of Murphy, J.).

Nor is this application of guilt by association made less repugnant by the Board's theory that the ruling "would prompt the union to keep a continuing check on its officers and to remove a Communist officer as soon as his deceit comes to light" (p. 15, Brief, No. 57, *ibid.,* see also pp. 32-33). Presumably, therefore, the Board feels that some dereliction of duty by the union or Lannom's workers is somehow involved. But a union which has adopted a policy to comply with the Act can plainly do no more than to elect officers who represent themselves as able to sign the affidavit truthfully. If the officer refuses to sign in the face of such a union policy, the union can remove him from office. If he signs, the union has the right to assume that the severe criminal sanctions will deter a false oath. As far as the Congressional policy is concerned, the union has done all that it can in making the signing of the affidavit the condition for holding office.

Any other requirement would impose an unworkable "loyalty" process upon unions which could lead to their

emasculation. The pressure would be to reject those officers who are radical, militant, progressive, leftist or even "communistic" on the theory that they would be more vulnerable to prosecution and consequently more likely to prejudice the compliance status than conservative or reactionary union officers. Should a suspicion of "communism" flow from strong wage demands, or from an advanced position on racial equity, or public ownershrip, so as to alert the union that the officer's affidavit may be false? And what about secret members of the Communist Party? Congress did not command, as the Board now proposes, that the union should "keep a continuing check [for Communist Party membership or affiliation] on its officers." It saw, if the Board does not, the ensuing disaster to a vigorous and independent labor movement if only "safe" officers could be elected. It left the policing job to the due process of the criminal law, not to suspicion, charges, rumors and hearsay.

Finally, the application of the guilt by association principle is not avoided even under the Board's proposal. Who is to keep this "continuing check";—the workers in Lannom's plant in Tennessee? What standards should they employ? Are "suspicious" circumstances which are brought to the attention of some, but not of all of the members, sufficient? Is knowledge necessary, or is reason to know—or to suspect—sufficient? Even if, in some way not disclosed by this record, Lannom's workers had reason to divine in 1952 that in 1954 Gold would be convicted of having falsely denied Communist Party membership in 1950, they had no reason to believe that he would be convicted of filing false affidavits in 1951 or 1952. In fact, he has not been. In view of the heavy criminal penalties to which Gold was exposed in filing the affidavits they would have had to assume utter irrationality to believe them false. Yet the ruling below, without adverting to their lack of participation in any wrongdoing whatever, directly penalizes them.

The ruling below—based upon express disagreement with the consistent construction of section 9(h) in a series of cases denied review by this Court—erroneously construes the statute, ignores its legislative history, threatens the stability of labor agreements and relationships and imposes serious injury upon innocent persons and organizations.

II.

Even if an implied power to decomply exists, decompliance cannot result from conviction on an expired affidavit or for a period during which the affidavit was *functus officio*.

The crucial compliance period in this case is February, 1952, when the Board's complaint issued. *National Labor Relations Board* v. *Dant*, 344 U. S. 375. On that date Fur and Leather's compliance was based, *inter alia*, upon Gold's August, 1951 affidavit, and the 1950 affidavit had then expired for compliance purposes.

The holding below is therefore erroneous, even if an inherent power to decomply exists.

I. The section 9(h) affidavit by its terms is and, constitutionally must be, in the present tense. *American Communications Association* v. *Douds*, 339 U. S. 382, 414. Therefore, as the dissent below points out (R. 21), the holding that the 1951 affidavit was false because the 1950 affidavit may be deemed false violates the premise on which the constitutionality of the Act is based. As Judge Stewart noted:

> "In *American Communications Assn.* v. *Douds*, 339 U. S. 382, 414, the opinion in chief, rejecting the claim that § 9(h) was a bill of attainder, emphasized that 'members of those groups identified in § 9(h) are free to serve as union officers if at any time they

renounce the allegiances which constituted a bar to signing the affidavit in the past. Past conduct, actual or threatened by their previous adherence to affiliations and beliefs mentioned in § 9(h), is not a bar to resumption of the position.' The conclusion reached in the prevailing opinion seems to me to impose an improper limitation upon Chief Justice Vinson's language."

If, "as a matter of law" Gold's 1951 affidavit was false because of the falsity of his 1950 affidavit [5] then section 9(h) is *ex post facto* in operation and it is a bill of attainder.

2. The 1950 affidavit, under the terms of the Act, had lost vitality for compliance purposes as of February, 1952. The ruling below thus plainly violates the Act by making the union's compliance status in 1952 hinge on a state of facts in 1950 and upon an affidavit which was then more than a year old and without further efficacy for compliance purposes.

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[5] It is true that the court qualified this by the phrase "in the absence of a showing to the contrary". But the practical effect of its ruling was to treat the conviction on the 1950 affidavit as *res judicata* for the 1951 affidavit since the determination of falsity is categorical and without notice or an opportunity to disprove it having been given. Contrary to this alleged rule of law (for which no authority is cited in the majority opinion) the standard presumption of innocence supports the conclusion that Gold's 1951 affidavit was not criminally filed.

III.

In any event it was error to decomply the union while the conviction is on appeal.

As noted, *supra,* pp. 4-5, 17, Gold's case is now on appeal in this Court. At the time of the decision below it was pending undetermined in the Court of Appeals for the District of Columbia.

Gold's appeal presents substantial issues of law and of fact (Petition for certiorari, No. 137 this Term). The trial court so certified in allowing him to remain on the same bail pending appeal; the conviction was affirmed by an evenly divided *in banc* court and the only opinion in the case was for an acquittal.

If the conviction is reversed, the decision below will have subjected the union and Lannom's employees to serious injury on account of an unjust conviction. The majority implies that if "a different factual situation" should result because of the reversal of the conviction in the pending appeal (R. 20) it would vacate its order of dismissal and consider the enforcement petition on its merits. However, in view of the importance of the matter, it considered it inadvisable "to 'freeze' this proceeding for an unreasonable length of time awaiting such termination" (R. 20). The possibility of this retroactive kind of on-again-off again-on again compliance status is a compelling argument against the ruling below. But if the court were to apply its rule that the conviction of an officer retroactively decomplies the union then, at least, it should have awaited the finality of the conviction before subjecting the union to the application of its judicial legislation.

IV.

The court below was obliged to give effect to the decisions of the District of Columbia Circuit that the union's compliance status was not impaired by the falsity, real or alleged, of the affidavits.

Under the Board's Rules and Regulations, a national or international union is required to file the affidavits necessary to establish its compliance status at the Board's office in Washington, D. C. (Rules and Regulations, Series 6, as amended, § 102.13). Thus the domicile, or a situs in the nature of domicile, of the compliance status is in the District of Columbia. Further, the District of Columbia "is the sole venue of prohibitory suits against the Board." *National Labor Relations Board* v. *Vulcan Furniture Manufacturing Co.*, 214 F. 2d 369 (5th Cir.).

In three separate actions between the union and the Board, the courts of the District of Columbia have held that the falsity, real or alleged, of Gold's affidavits, did not impair the union's compliance (R. 3-5), *supra*, pp. 5-6. In two of those actions this Court had denied review, *ibid.* The injunctions against the Board's interference with the union's compliance status were in full force at the time that the case was heard and decided below. No matter that the court did not agree with them; it had no power to deny them effect in an action between the same parties. Under familiar principles, they were *res judicata*. See *Cromwell* v. *Sac County*, 94 U. S. 351, 352; *International Union of Mine, Mill and Smelter Workers* v. *Eagle-Pilcher Mining Company*, 325 U. S. 335, 340; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 401-2.

Unless the doctrine of *res judicata* is applied, any representation or unfair labor practice proceeding before the Board or enforcement proceeding before the courts of appeals is subject to endless delays while a respondent

raises issues not merely concerning the section 9(h) affidavits, but of the financial and other data required by sections (f) and (g) of the Act. If Lannom is free to litigate, on the issue of falsity, a status between the union and the Board, every other employer would be free to do so and not even this Court's decision would finally conclude the matter. For if Lannom is not bound, there is no reason why any other employer should be bound by Lannom's success or failure in this case. Unfair labor practice and enforcement proceedings would therefore be devoted to litigating and relitigating not whether an unfair labor practice has been committed, but whether the compliance affidavits, reports and records, past or present, are true or false; and no employer except the particular employer would ever be bound by the outcome.

In *National Labor Relations Board* v. *Coca Cola Bottling Co., supra,* p. 6, this Court held that an employer could litigate whether the requisite compliance papers had been filed. It is another matter to hold that it may litigate whether they are true. *National Labor Relations Board* v. *Puerto Rico Food Prod. Corp.,* 232 F. 2d 515, 519-520 (1st Cir.).

The Board's position in No. 57 this Term supports the argument for *res judicata.* It argues in that case that it settled the falsity issue which arose there in "a separate administrative proceeding" in a way which does "not interrupt or otherwise delay particular unfair labor practice or representation proceedings, the problem which concerned Congress in adopting the affidavit technique" (Brief in No. 57, *supra,* pp. 16-17). If a disposition of the compliance issue in a separate administrative proceeding is, as the Board argues, *res judicata* so as to bar its injection into particular proceedings, it is impossible to see why the judicial determination of the compliance status of Fur and Leather in litigation between it and the Board

in the District of Columbia circuit did not bar its injection into the particular enforcement proceedings in the Sixth Circuit in order to meet "the problem which concerned Congress in adopting the affidavit technique" (*supra*).

CONCLUSION

The order below should be reversed.

September 21, 1956.

Respectfully submitted,

HAROLD I. CAMMER,
Attorney for Petitioner.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 40

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO, AS SUCCESSOR BY MERGER TO INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION TO POSTPONE ARGUMENT

The Solicitor General, on behalf of the National Labor Relations Board, respectfully files this motion, under Rule 43 (4) of the Revised Rules of this Court, to postpone the argument of this case, which is tentatively scheduled to be heard at the November session. The reasons on which this motion is based are as follows:

In the instant case the Court of Appeals for the Sixth Circuit has held that petitioner union is ineligible to receive benefits under the National Labor

Relations Act because the union's president, Gold, had been convicted in the United States District Court for the District of Columbia of filing a false non-Communist affidavit under Section 9 (h) of the Act. Accordingly, that court dismissed the Board's petition for enforcement of its unfair labor practice order against the respondent, Lannom Manufacturing Company, on the ground that the Board's complaint and order had been entered on a charge filed by a non-complying union. On March 9, 1956, subsequent to the decision below in the instant case, the Court of Appeals for the District of Columbia Circuit, sitting *en banc,* affirmed Gold's conviction by an equally divided vote. On October 8, 1956, this Court granted Gold's petition for certiorari to review the validity of his conviction. No. 137, *Gold* v. *United States.*

The grant of certiorari in No. 137 suggests the possibility that Gold's conviction of filing a non-Communist affidavit may be reversed. If that should occur, the premise on which the Sixth Circuit decided the instant case would be swept aside. Reversal of Gold's conviction would, therefore, have the practical effect of mooting the issues raised by the instant appeal. In that eventuality, presumably the appropriate disposition of the present case would be a reversal and remand to the Court of Appeals for the Sixth Circuit for further proceedings in light of the reversal of Gold's conviction.

This Court's review of the *Gold* case may thus result in a disposition which would render academic the issues presented in the instant case. It is sug-

gested, therefore, that the Court may deem it appropriate to postpone further consideration of the present case until the status of Gold's conviction is finally determined in No. 137.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,
National Labor Relations Board.

OCTOBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956

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JOHN T. FEY,

IN THE

Supreme Court of the United States

October Term, 1956

No. 40

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as Successor by Merger to International Fur & Leather Workers Union of United States and Canada,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and LANNOM MANUFACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONSE TO MOTION TO POSTPONE ARGUMENT

Petitioner submits that the Solicitor General's motion establishes the error of the Sixth Circuit's order, and that the motion to postpone should therefore be disposed of by a *per curiam* reversal of the order below without argument. If argument is deemed necessary, the motion to postpone should be denied.

As the brief which petitioner has filed herein points out, decompliance of a union—apart from the fact that it is not authorized by the statute nor supported by the legislative history—is a thoroughly impractical sanction for a false §9 (h) affidavit. The purpose of the statute to facilitate the resolution of representation disputes and the prevention of unfair labor practices is vitiated if Board or judi-

cial proceedings must await the collateral processes of the criminal law to determine whether an election should be held, a complaint issued or, as here, a reinstatement order enforced (Petitioner's Brief, at pp. 16-19).

Gold's appeal from the conviction was pending undetermined before the District of Columbia Circuit when, in December, 1954, the case was argued before and, in October, 1955, decided by, the Sixth Circuit. During this time enforcement of the Board's reinstatement order against the employer was in abeyance. Despite the possibility, recognized by the Sixth Circuit (R. 20), that the conviction might be set aside, it upheld the Board's position that the union should be decomplied retroactively to 1950 because of the conviction. The present motion demonstrates the error of that holding.

1. If *Gold* (No. 137, this Term) should result in an acquittal: (a) the injury to the union and to the workers who, the Board has found, were unlawfully discharged in 1951, will have been aggravated by the continued decompliance of the union because of the unjust conviction of a former officer; and (b) the imperative issue presented by this case will nevertheless not be mooted, but will remain for decision of the Court at this Term because of the *Mine, Mill and Smelter Union* case (No. 57, this Term) which is now set for argument with this case and which has nothing to do with Gold's conviction. The Mine-Mill case presents for review the District of Columbia Circuit's holdings, which the Sixth Circuit rejected in this case, that the remedy for a false § 9(h) affidavit is punishment of the affiant not decompliance of the union.

2. *Gold* cannot be argued until after the Court reconvenes in January, 1957. If, instead of an acquittal, it should result in a new trial, the logic of the present motion would suggest that this case should then await the outcome of that trial, possible new review, etc. Under the theory of the

ruling below and of the motion, it could thus easily be 1960 before the union's 1950-1-2 compliance status could be determined.

3. If Gold's conviction should be affirmed, the question will still remain whether the punishment of a union by decompliance and its members by the denial of protection against unfair labor practices because of the conviction of an officer of having filed a false affidavit is not "as reckless as firing a shot-gun into a crowd of people in an effort to stop one who is picking their pockets." *Farmer* v. *United Electrical Workers,* 211 F. 2d, at p. 39.

The grant of certiorari in *Gold* therefore does not affect the urgency of the underlying issue or its ripeness for decision.

The motion to postpone is in effect an acknowledgment that the Sixth Circuit's order was erroneous. That order should be reversed *per curiam* without argument; alternatively, the motion should be denied.

October 16, 1956.

Respectfully submitted,

HAROLD I. CAMMER,
Attorney for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 40

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO, AS SUCCESSOR BY MERGER TO INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINION BELOW

The opinion of the court below (R. 13–22), filed October 6, 1955, is reported at 226 F. 2d 194.

JURISDICTION

The order of the court dismissing the Board's enforcement petition was entered on October 6, 1955 (R. 12). On December 19, 1955, by order of Mr. Justice Reed, the time for filing a petition for a writ of certiorari was extended to and including March 3, 1956 (R. 85). The petition for a writ of certiorari was filed on March 1, 1956, and was granted on

April 23, 1956. The jurisdiction of the Court rests on 28 U. S. C. 1254 (1) and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether an unfair labor practice order of the National Labor Relations Board is rendered invalid when an officer of the union which filed the unfair labor practice charge is convicted, in separate criminal proceedings, of having filed a false non-Communist affidavit under Section 9 (h) of the National Labor Relations Act, as amended.

2. Whether the court below was nonetheless required to disregard the conviction because the District Court for the District of Columbia, in an earlier suit brought by the union against the Board but not involving the employer herein, had held that the Board lacked power under the Act to alter the union's compliance status on account of the officer's conviction, and had issued a preliminary injunction enjoining the Board from doing so.

STATUTE INVOLVED

Section 9 (h) of the National Labor Relations Act, as amended, 61 Stat. 136, 146, 65 Stat. 601, 602, 29 U. S. C. 159 (h), provides:

REPRESENTATIVES AND ELECTIONS

SEC. 9 * * *

* * * * *

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of

this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

STATEMENT

The court below dismissed the Board's petition to enforce the unfair labor order which it had issued against Lannom Manufacturing Company (R. 22–27; 103 N. L. R. B. 847), on the ground that the proceeding was invalidated by the supervening conviction of Ben Gold, an officer of the union which had initiated the proceeding, for having filed a false non-Communist affidavit under Section 9 (h) of the Act. The underlying facts may be summarized as follows:

1. *The Board unfair labor practice proceeding*

On April 18, 1951, the International Fur and Leather Workers Union (the "Union")[1] filed a charge

[1] This union merged with petitioner Amalgamated Meat Cutters in February, 1955 (Pet. for cert., fn. 1).

with the Board, alleging that Lannom Manufacturing Company ("Lannom") had discriminated against and restrained its employees in the exercise of their organizational rights, in violation of Sections 8 (a) (1) and (3) of the Act (R. 43). This charge was amended, without substantial change, on June 18, 1951, November 13, 1951, and February 18, 1952 (R. 44–46). On February 27, 1952, the Regional Director of the Board issued a complaint based on the charges (R. 38–41).

At the hearing before the Trial Examiner, Lannom sought to prove that the Section 9 (h) affidavits filed with the Board by certain officers of the Union, including President Ben Gold, were false (R. 34–36). Gold had filed his first affidavit on or about August 30, 1950, and had filed affidavits of similar import annually thereafter (R. 3–4). The Trial Examiner, pursuant to the Board's view that questions of compliance with Section 9 (h) are for the Board's administrative determination and may not be litigated by the parties in unfair labor practice or representation proceedings,[2] declined to permit Lannom to go into the compliance issue (R. 36–37, 50).

On July 3, 1952, the Trial Examiner issued his intermediate report, finding that Lannom had violated Sections 8 (a) (1) and (3) of the Act, and recommending that an appropriate remedial order issue (R. 49–84). On March 20, 1953, the Board, with some modification, sustained the Trial Examiner's

[2] See *Lion Oil Co.*, 76 N. L. R. B. 565, 566; *Coca-Cola Bottling Co. of Louisville, Inc.*, 108 N. L. R. B. 490, 491.

findings and issued a remedial order against Lannom (R. 22–27). The Board specifically affirmed the Trial Examiner's rejection of Lannom's evidence on the Union's alleged noncompliance with Section 9 (h), adding (R. 23, fn. 2):

> We are administratively satisfied that the Union was in compliance with Section 9 (h) at all times relevant hereto. See *American Cable & Radio Corporation,* 102 N. L. R. B. [877]. See also, *United Tanners, Inc.,* 103 N. L. R. B. [761, fn. 3]

In the cited cases, the Board indicated that, prompted by the refusal of Gold and certain other union officers to acknowledge before a grand jury the veracity of their Section 9 (h) affidavits, it had administratively requested these officers to reaffirm their affidavits, but that such action had been enjoined, as beyond the Board's statutory authority, by the District Court for the District of Columbia.[8]

2. *The falsity of Union Officer Gold's affidavit is established in criminal proceedings*

In August 1953, an indictment under 18 U. S. C. 1001 was returned against Union Officer Gold in the District Court for the District of Columbia, charging that the non-Communist affidavit which he filed with the Board on August 30, 1950 was false. On April 30, 1954, Gold was convicted on two counts of

[8] *United Electrical Workers, et al.* v. *Herzog*, 110 F. Supp. 220, affirmed, *sub. nom. Farmer* v. *United Electrical Workers*, 211 F. 2d 36 (C. A. D. C.), certiorari denied, 347 U. S. 943.

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this indictment, and a fine and prison sentence were thereafter imposed on him (R. 4–5, 10).[4]

Because of Gold's conviction, the Board, on May 28, 1954, administratively ordered the Union to show cause why its compliance status under the Act should not be altered unless Gold were removed from office. When the Union responded, *inter alia,* by reelecting Gold to a new term as president, the Board entered an order declaring the union to be out of compliance with Section 9 (h) (R. 5, 10–11). *Compliance Status of International Fur & Leather Workers Union,* 108 N. L. R. B. 1190.

The Union thereupon obtained from the District Court for the District of Columbia a preliminary injunction, which was thereafter affirmed on appeal, enjoining the Board from altering or restricting the Union's compliance status under the Act by reason of Gold's conviction (R. 5, 8–9). *Fur Workers Union* v. *Farmer,* 34 L. R. R. M. 2493 (July 20, 1954), affirmed, 221 F. 2d 862 (C. A. D. C., February 15, 1955).

3. *The enforcement proceeding in the court below*

On September 10, 1954, after the Court of Appeals for the District of Columbia Circuit had denied the Board's request for a stay of the preliminary injunction pending disposition of the Board's appeal therefrom, the Board petitioned the court below, pursuant to Section 10 (e) of the Act, for enforce-

[4] Gold was placed on bail pending appeal. On March 9, 1956, the conviction was sustained by an equally divided vote of the Court of Appeals for the District of Columbia Circuit, sitting en banc, and, on October 8, 1956, this Court granted Gold's petition for certiorari, No. 137, this Term. After the grant of certiorari, the Board moved to have the argument in the instant case postponed pending the Court's decision in the conviction case, but, on October 22, 1956, the Court denied this motion.

ment of the unfair labor practice order, described *supra*, pp. 4–5, which it had issued against Lannom (R. 29–30). Shortly thereafter the Board, being advised by Lannom that it intended to challenge the sufficiency of the Union's compliance with Section 9 (h), filed a supplement to its enforcement petition, setting forth the facts respecting Gold's conviction and the injunction issued by the District of Columbia court which had blocked the Board's cancellation of the compliance status of the Union (R. 3–5).

Lannom thereupon moved to dismiss the Board's enforcement petition because it disclosed on its face that Union Officer Gold had filed false Section 9 (h) affidavits, and that the charging Union was thus not in full compliance with that Section at all times relevant to the unfair labor practice proceeding (R. 1). The Union was permitted to intervene, and opposed the motion to dismiss (R. 2–3).

On October 6, 1955, after hearing argument by all parties, the court below granted Lannom's motion to dismiss the Board's petition for enforcement (R. 12). A majority of the court, indicating its disagreement with the view of the District of Columbia courts that the veracity of a Section 9 (h) affidavit is irrelevant to the Board's inquiry (R. 16–17), concluded that "as a matter of law, the 1950 affidavit of Gold and his subsequent conviction affirmatively show on the present record in this case a lack of compliance on the part of the charging union on August 30, 1950 and for such time thereafter as such conditions continued to exist" (R. 18–19). Rejecting the Union's contention that the conviction, in any event, merely involved Gold's

1950 affidavit, whereas the complaint was issued on the basis of Gold's subsequent 1951 affidavit, the court added that, considering "the falsity of the 1950 affidavit and the nature of the Communist Party," the "renewal affidavit in 1951, unsupported by any alleged change in the factual situation," did not rebut the reasonable presumption that Gold had continued his membership in the Communist Party (R. 19–20).

Judge Stewart dissented on this last point, concluding that the conviction on Gold's 1950 affidavit was insufficient to warrant an inference as to the falsity of his 1951 affidavit (R. 21–22).

SUMMARY OF ARGUMENT

I

The Union's initial contention, that the sole consequence under the Act of a false non-Communist affidavit is a criminal penalty for the guilty union officer and that it has no effect on the union's right to Board benefits, is dealt with in our brief in the companion case, *Leedom* v. *International Union of Mine, Mill and Smelter Workers,* No. 57. The arguments presented in that brief are fully applicable here. They demonstrate, we believe, that Congress adopted the technique of having union officers file non-Communist affidavits, which were subject to the criminal sanction of 18 U. S. C. 1001, merely to avoid threshold Board inquiries into the Communist character of unions, and not, as petitioner suggests, for the purpose of precluding the Board from altering the union's compliance status should the falsity of the affidavit subsequently be established in either crimi-

nal or separate administrative proceedings. Such Board power of cancelling the union's compliance status is consistent with the scheme of Section 9 (h) and effectuates its purposes, and it also flows from the Board's general power to safeguard its processes from abuse.

Nor is this conclusion impaired by petitioner's assertion that cancellation of the union's compliance status on account of a false affidavit is not a practical or suitable sanction. The subsequent discovery that the union had not in fact complied with Section 9 (h) because an affidavit proves to be false results in no greater loss of past benefits and bargaining stability than the subsequent discovery that there has been noncompliance because not all of the required officers had filed affidavits (see *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322). Moreover, declaring the union to be non-compliant does not result in "guilt by association," because the action results not merely from the fact that the guilty officer is associated with the union, but from the union's failure to insure, as Congress desired, that it was in fact rid of Communist leaders.

II

A majority of the court below properly rejected the union's contention that, even if the conviction on Gold's 1950 affidavit impaired Board benefits attributable to that affidavit, it did not affect the unfair labor practice order here, since, at the time the complaint was issued, Gold's 1951 affidavit was in effect.

The proceeding was, to some extent at least, dependent on Gold's 1950 affidavit, because it was in effect at the time the charge was filed, and the Board's rules, tightening the statutory period, require compliance with Section 9 (h) within 10 days of the filing of the charge.

In any event, the established fact that Gold had a fraudulent intent when he filed the first affidavit has relevant bearing on his intent when filing the 1951 affidavit. Moreover, the conviction on Gold's 1950 affidavit, having demonstrated that he was still a member of the Communist Party at that time, gives rise to a presumption of the continuation of such membership. For these reasons, and in the light of the special characteristics of the Communist Party and of membership therein, the court below was fully warranted in inferring from Gold's conviction on the 1950 affidavit that his 1951 affidavit was also untrue.

Such inference does not make the Section 9 (h) affidavit vulnerable as a bill of attainder. The basis of the inference is not the impermissible one (see *American Communications Association* v. *Douds,* 339 U. S. 382, 413–414) that, because Gold was once a Communist Party member, he always must be deemed to remain a member. Rather, it is that Gold's false statement about his change in membership in 1950 sheds light on his intention and status when he filed the 1951 affidavit.

Nor can it be contended that Gold's conviction on his 1950 affidavit was of no probative value because an appeal therefrom was pending. It is settled

that, when the jury returns a verdict of guilty, "the law now presumes the facts to be as the jury found them" (*United States* v. *Kawakita,* 96 F. Supp. 824, 835 (S. D. Cal.), affirmed 190 F. 2d 506 (C. A. 9), certiorari denied, 343 U. S. 717). Moreover, it is equally clear "that while appeal with proper supersedeas stays execution of the judgment, it does not—until and unless reversed—detract from its * * * finality" (*Huron Corp.* v. *Lincoln Co.,* 312 U. S. 183, 189).

III

The court below likewise properly rejected the Union's contention that principles of *res judicata* required it to follow the holding of the District of Columbia courts that the Board lacked power to alter the Union's compliance status on account of Gold's conviction. The employer herein (Lannom) was not a party, or in privity with any party, to the District of Columbia litigation, and thus would not be bound by the determination therein.

ARGUMENT

I

UNDER THE ACT, THE FALSITY OF A UNION OFFICER'S SECTION 9 (h) AFFIDAVIT AFFECTS THE UNION'S COMPLIANCE STATUS

In its brief in the companion case, *Leedom* v. *International Union of Mine, Mill and Smelter Workers,* No. 57, the Board has set forth the reasons why it believes that the veracity of a union officer's non-Communist affidavit under Section 9 (h) is relevant to its functioning, and why, should such falsity be established

either in criminal or separate administrative proceedings, the Act empowers the Board to cancel the union's compliance status and to invalidate benefits acquired on the basis of that officer's affidavits. These reasons are equally applicable here in dealing with the Union's initial contention (Br. 11–21) that the sole consequence under the Act of a false Section 9 (h) affidavit is a criminal penalty for the guilty union officer, and that such falsity has no effect on the union's right to Board benefits.

Thus, the Union's contention rests on two premises: (1) that the legislative history of Section 9 (h) conclusively shows that Congress intended to make a criminal penalty for the union officer the sole consequence of a false affidavit; and (2) that cancellation of the compliance status of the union would have such drastic consequences for the union and impose such a severe responsibility upon its members that it is not "a practical or a suitable sanction for conviction of an officer making a false affidavit" (Br. 16). Respecting the first premise, we have argued (Board Br. in No. 57, pp. 33–36) that this history merely shows that Congress decided on the affidavit technique to avoid threshold Board inquiries into the Communist character of unions, and not that Congress intended to preclude the Board, when the falsity of the affidavit is subsequently established in criminal or separate administrative proceedings, from altering the union's compliance status. Indeed, where, as here, the falsity of the officer's affidavit is established in criminal proceedings under 18 U. S. C. 1001, it is patent that the Board's power to alter the union's

status is not negated by the legislative history relied on by the Union. For, in this situation, the Board engages in no investigation of its own into the truth or falsity of the affidavit; the only investigation is made by the Department of Justice, and the denial of Board benefits is predicated on the conviction resulting therefrom. In short, the Board action occurs after the statutory role assigned to the Department of Justice has been fulfilled, and simply recognizes the conviction obtained by it for what it shows, *viz.*, that "what in form is an affidavit is merely a paper evidencing false swearing" (*National Labor Relations Board* v. *Vulcan Furniture Mfg. Corp.*, 214 F. 2d 369, 371 (C. A. 5), certiorari denied, 348 U. S. 873).[5]

The Union's second premise is equally unwarranted. As we have shown (Board Br. in No. 57, pp. 37–38), the subsequent discovery that the union had not in fact complied with Section 9 (h) because

[5] The excerpt from Chairman Herzog's testimony before the Senate Subcommittee in March, 1952, cited by the Union (Br. 14), does not foreclose the existence of Board power of "decompliance" *after* the falsity of the affidavit has been established in criminal proceedings. In a subsequent portion of the testimony, which the Union does not cite, Chairman Herzog was specifically asked what action the Board would take if the Department of Justice had obtained a criminal conviction against the officer, and he replied (Hearings before a Subcommittee of the Senate Labor Committee on Communist Domination of Unions and National Security, 82d Cong., 2d Sess., pp. 104–105):

"* * * That affidavit, if it is perjurious, certainly should not be regarded as a valid affidavit. * * * I have no doubt * * * that after conviction, and even pending appeal following the conviction, the Board would deny its processes to any union one of whose officers had been shown to have filed a perjured affidavit."

an affidavit proves to be false results in no greater loss of past benefits and bargaining stability than the subsequent discovery that there has been noncompliance because not all of the required officers had filed affidavits. These retroactive consequences are inherent in Section 9 (h) which, by requiring that there be valid affidavits on file as of the time a particular Board benefit is conferred, leaves no room for curing a past deficiency in compliance (*Ibid.*, p. 30). Just as such consequences were irrelevant to the question of whether there was full compliance with Section 9 (h) in the officer situation (*National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322), they are irrelevant to the question of whether noncompliance results when the falsity of the affidavit is established.

Nor does cancellation of the union's compliance status on account of a false affidavit result in "guilt by association," imposing a penalty and responsibility on the union and its members which Congress could not have intended. There is nothing in Congress' adoption of the affidavit technique which suggests that it intended to relieve the union, once its officers filed the required affidavits, of the responsibility to insure that it was in fact free of Communist officers. The original version of Section 9 (h), providing for initial Board determination of whether the union was under Communist control would have required the union fully to rid itself of such officers, and, if it had not, the union and its members would have been denied the benefits of the Act, no matter how "innocent" they may have been. Congress decided to use the affidavit technique, in-

stead, solely to avoid delaying Board proceedings and not to lessen the union's responsibilities after the affidavits had been filed (Board Br. in No. 57, pp. 33–37). Moreover, since the danger of "political strikes" from Communist union officers is as great where the rank-and-file are unsuspecting dupes as where they are conscious followers, it is inconceivable that Congress intended that the mere filing of affidavit should relax the union's vigilance.[6] Hence, the loss of the union's compliance status when the falsity of the officer's affidavit is established is not an instance of "guilt by association," a loss occasioned merely by the fact that the guilty officer is associated with the union; the loss, rather, is attributable to the union's own failure fully to eliminate Communist leaders, as Congress desired. There may be, as petitioner suggests (Br. 19–20), situations where the union would have difficulty in discovering whether an officer who has undertaken to file an affidavit is perpetuating a fraud, but neither here (where it reelected officer Gold as president despite knowledge of his conviction), nor in No. 57 (where it continued officer Travis in office despite his admission from the outset that his affidavit was false),[7] can it be said that the

[6] Petitioner assumes (Br. 17) that a jail sentence for the convicted officer "moots" the issue. But, should the union continue the officer in office while he is in jail (cf. the reelection of officer Gold after his conviction), the officer could keep on executing Section 9 (h) affidavits from jail; and the Board, if it lacked power to alter the union's compliance status based on the conviction, would be required to accept such affidavits as a basis for the union's continued compliance with the Act.

[7] Cf. the statement issued by officer Gold, R. 34, 36; *Gold* v. *United States*, No. 137, this Term, Brief for the United States in Opposition, pp. 14–15.

union has done all that it could to discharge its responsibility under Section 9 (h).

For these and the other considerations set forth in the Board's brief in No. 57, we submit that, under the Act, the conviction of a union officer for filing a false Section 9 (h) affidavit does affect the union's right to Board benefits.[8] Accordingly, we shall next discuss the Union's remaining contentions that: (1) Gold's conviction on his 1950 affidavit nevertheless afforded no basis for invalidating the instant unfair labor practice proceeding; and (2) the court below was precluded from taking into account Gold's conviction because of the prior judgment of the District

[8] We do not urge, as the court below suggested (R. 18), that, even if the Board lacked power under the Act to alter a union's compliance status where an officer's affidavit proved false, the court's power in this respect was broader. We believe that the court's power in respect to Board orders is limited to that conferred by Sections 10 (e) and (f) of the Act, and, as we read those provisions, they merely vest the court with a reviewing jurisdiction over Board action and do not authorize it to exceed such action. Cf. *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 342–343; *National Labor Relations Board* v. *Warren Co.*, 350 U. S. 107; *United States* v. *Morgan*, 307 U. S. 183, 191. Indeed, it is at least arguable that, where the officer's conviction for filing a false Section 9 (h) affidavit first comes to light while the Board unfair labor practice case is before the Court of Appeals for review or enforcement, the proper course for the court would be to remand the case to the Board to determine the effect of the conviction on the union's compliance status in separate administrative proceedings, rather than to make an initial determination of this question itself. A remand in this case, however, would have served no purpose, for the Board had made a separate administrative determination that Gold's conviction invalidated the union's compliance status, but had been enjoined by the District of Columbia courts from giving effect to this determination (p. 6, *supra*).

of Columbia courts that the Board lacked power to do so.

II

THE CONVICTION ON GOLD'S 1950 AFFIDAVIT WARRANTED INVALIDATION OF THE UNFAIR LABOR PRACTICE PROCEEDING

The facts summarized in the Statement (pp. 3–4) show that, although the Union's initial and first amended unfair labor practice charge were filed during the period when the Union's compliance status depended on Gold's 1950 affidavit, the unfair labor practice complaint was not issued until February 1952, by which time Gold's 1951 affidavit was in effect. Since *National Labor Relations Board* v. *Dant,* 344 U. S. 375, holds that, in unfair labor practice cases, Section 9 (h) requires compliance at the time the complaint issues and not when the charge is filed, the Union concludes that the validity of Gold's 1950 affidavit is irrelevant to this proceeding. That is, even if Gold's conviction established the falsity of his 1950 affidavit and resulted in a nullification of all Board benefits attributable to that affidavit, the unfair labor practice order here was dependent, not on that affidavit, but on Gold's 1951 affidavit, which was not affected by the conviction (Br. 21–22). We submit that a majority of the court below properly rejected this contention.

1. The instant proceeding was, to some extent at least, dependent on Gold's 1950 affidavit. Although the terms of Section 9 (h) do not require compliance in unfair labor practice cases before the complaint issues, this Court recognized in *Dant,* 344 U. S. 375, 380–382,

that the Board is empowered to and has tightened this period by rule,[9] requiring compliance with Section 9 (h) within 10 days of the filing of the charge. Accordingly, had Gold's 1950 affidavit not been on file within 10 days of the filing of the charge herein, or had the falsity of that affidavit been established within that period, it seems clear that the Union's unfair labor practice charge would have been dismissed. The mere fact that the falsity of the affidavit is not discovered until later should not put the Union in any better position than it would have been in had the falsity appeared earlier.

2. Assuming that the instant proceeding hinged only on the 1951 affidavit, the court below correctly concluded that Gold's conviction on the 1950 affidavit was relevant, insofar as the Board proceeding was concerned, in assessing the validity of his 1951 affidavit. The established fact that Gold had a fraudulent intent when he filed the 1950 affidavit sheds light on his intent when filing the 1951 affidavit. As stated by Judge Learned Hand, when "intent * * * is an issue it is always permissible, even in civil actions and criminal prosecutions, to show that the actor had been engaged in other similar transactions. Wigmore § 302. The rationale of this is that if the disputed intent was present on the earlier occasions, it was likely to have been present upon that under inquiry, because the disposition then shown to exist was likely to persist." *National Labor Relations Board* v. *National Seal Corp.*, 127 F. 2d 776, 778 (C. A. 2). More-

[9] C. F. R. § 101.3 (b), set forth at pp. 47–48 of the Board's brief in No. 57.

over, the conviction on Gold's 1950 affidavit, having demonstrated that he was still a member of the Communist Party at that time, gives rise to a presumption of the continuation of such membership. For, as pointed out by the court in *National Labor Relations Board* v. *Piqua Munising Wood Products,* 109 F. 2d 552, 554 (C. A. 6), in sustaining the Board's inference that union membership cards signed two years earlier evidenced current membership: "It is a well-established rule of evidence that when the existence of a personal relationship or state of things is once established by proof, the law presumes its continuance until the contrary is shown or until a different presumption arises from the nature of the subject matter." See also Wigmore on Evidence § 2530.

These inferences appear particularly justified in the light of the special characteristics of the Communist Party and of membership therein. The court below noted that (R. 19):

> In his separate opinion in *American Communications Association* v. *Douds,* 339 U. S. 382, Justice Jackson pointed out (p. 432) the differences between the Communist Party and the major political parties in the United States, that membership in it is totally different from membership in the usual political party, and that *inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party.* He wrote: "The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrina-

> tion in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that identification can only be made by officers of the Party who hold the code. Moreover, each pledges unconditional obedience to party authority. * * * For any deviation from the party line they are purged and excluded." See also similar expressions of views by Chief Justice Vinson, Justice Frankfurter and Justice Jackson in *Dennis* v. *United States,* 341 U. S. 494, at pages 498, 547 and 564 respectively. [Emphasis in original.]

Similarly, as is shown in the Board's brief in No. 57 (pp. 31–32, fn. 24), it is now clear that the Communist Party has long followed the policy of having its members "formally resign" without in fact severing Party ties, and that this policy was specifically adopted in respect to Section 9 (h) affidavits.

To infer from Gold's conviction on the 1950 affidavit that his 1951 affidavit is also untrue does not, as the Union and the dissenting judge (Br. 21–22; R. 21) assert, make the Section 9 (h) affidavit vulnerable as a bill of attainder. In *American Communications Association* v. *Douds,* 339 U. S. 382, 413–414, this Court rejected the bill of attainder contention because it viewed the affidavit as not penalizing past conduct; i. e., "members of those groups identified in § 9 (h) are free to serve as union officers if at any time they renounce the allegiances which constituted a bar to signing the affidavit in the past" (*Id.,* at 414). Consistent with this holding, the mere fact that Gold may have been a member of the Com-

munist Party in 1949 does not preclude him from making a *bona fide* resignation in 1950 and filing an affidavit to this effect; nor would the fact that he was a member of the Party in 1950, by itself, negate an affidavit in 1951 that he was not then a member. However, when it is established that Gold lied when he filed his 1950 affidavit, there is no reason to assume, in the absence of evidence to the contrary, that he took his 1951 affidavit any more seriously. Accordingly, the burden then shifts to the Union to demonstrate, by something more than the now inconclusive circumstance that Gold filed a further affidavit, that the conditions which showed he was lying in 1950 did not continue to exist in 1951.[10]

In short, the basis of the inference indulged in by the court below is not the impermissible one that, because Gold was once a Communist Party member, he always must be deemed to remain a member; rather, it is that Gold's falsehood about his change in membership in 1950 sheds light on his intention and status when he filed the 1951 affidavit. As the Court recognized in *Douds*: "Of course, the history of the past conduct is the foundation for the judgment as to what the future conduct is likely to be" (339 U. S. at 413–414). Just as Congress, in enacting Section 9 (h), could properly infer that a union officer who was a member of the Communist Party was likely to engage in political strikes in the future (339 U. S. at 391), it was reasonable for the court

[10] The Union made no such showing, either before the court below in this proceeding or in the Board's administrative proceeding (p. 6).

below to conclude, particularly on the record herein, that Gold, having given false oath as to his 1950 Party membership, also did the same as to his 1951 membership.

There remains for consideration the Union's further contention (Br. 23) that Gold's conviction on his 1950 affidavit afforded no basis for an inference because, since an appeal therefrom had been taken and Gold had been placed on bail during its pendency, the falsity of the 1950 affidavit was itself still in question. Preliminarily, it may be noted that, after the decision herein, the conviction was affirmed by an equally divided vote of the Court of Appeals sitting en banc, and, on October 8, 1956, this Court granted Gold's petition for certiorari, No. 137, this Term.[11] In any event, we submit that the Union's contention is without merit.

It is settled that, when the jury returns a verdict of guilty, "the law now presumes the facts to be as the jury found them" (*United States* v. *Kawakita,* 96 F. Supp. 824, 835 (S. D. Cal.), affirmed 190 F. 2d 506 (C. A. 9), certiorari denied 343 U. S. 717); "the presumption of innocence vanishes and a heavy presumption of guilt supplants it" (*United States* v. *Burgman,* 89 F. Supp. 288, 289 (D. D. C.)). It is equally clear "that while appeal with proper supersedeas stays execution of the judgment, it does not—until and unless reversed—detract from its * * * finality" (*Huron Corp.* v. *Lincoln Co.,* 312 U. S. 183, 189). Accordingly, a criminal conviction, notwith-

[11] As noted in fn. 4, p. 6, *supra*, after the grant of certiorari, the Board moved the Court to postpone argument in the instant case, pending the Court's decision in the conviction case, but, on October 22, 1956, the Court denied this motion.

standing the pendency of an appeal therefrom, is sufficiently final for purposes of revoking citizenship (*United States* v. *Bridges*, 90 F. Supp. 973, 974–975 (N. D. Cal.), conviction itself subsequently set aside, 346 U. S. 209), and it furnishes sufficient basis for disbarment of an attorney (Freeman on Judgments, 5th ed., p. 1383, fn. 2). In this light, the court below was fully warranted in concluding that the falsity of Gold's 1950 affidavit was sufficiently established by the judgment of conviction which had been returned in the District Court.

III

THE COURT BELOW WAS NOT PRECLUDED FROM TAKING INTO ACCOUNT GOLD'S CONVICTION BECAUSE OF THE PRIOR HOLDING OF THE DISTRICT OF COLUMBIA COURTS THAT THE BOARD LACKED POWER TO DO SO

The record before the court below set forth, without dispute, the facts respecting Gold's conviction,[12] tendering only a legal issue as to effect of the conviction on the validity of this proceeding. In the circumstances of this case (see fn. 8, p. 16, *supra*), the situation was thus like the prior cases where legal questions respecting the sufficiency of union compliance with Section 9 (h) have been raised by respondents to unfair labor practice proceedings,[13] accordingly, the court be-

[12] It is immaterial that these facts, having come to light after the Board's order had issued, were first set forth in the Board's petition for enforcement. Cf. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 331 U. S. 416, 428, 431.

[13] *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 341 U. S. 322; *National Labor Relations Board* v. *Dant*, 344 U. S. 375; *National Labor Relations Board* v. *Coca-Cola Bottling Co.*, 350 U. S. 264.

low was empowered to resolve this issue, and, if it found that compliance was defective, to deny enforcement of the Board's order. "It would be strange indeed if the courts were compelled to enforce without inquiry an order which could only result from proceedings that, under the admitted facts, the Board was forbidden to conduct" (*National Labor Relations Board* v. *Highland Park Mfg. Co.*, 341 U. S. 322, 325).

This conclusion is not impaired by the Union's contention (Br. 24–26) that principles of *res judicata* required the court below to follow the holding of the District Court for the District of Columbia, subsequently affirmed by the Court of Appeals for that Circuit (p. 6, *supra*), that the Board lacked power to alter the Union's compliance status on account of Gold's conviction. As the court below noted (R. 20):

> Although the District Court enjoined the Board from revoking the compliance status of the Union by reason of [Gold's conviction], the injunction does not run against the respondent [Lannom] herein, who was not a party to that action, and does not render the present proceeding *res judicata*. *Postal Telegraph Cable Co.* v. *City of Newport*, 247 U. S. 464, 476; *Swetland* v. *Curry*, 188 F. 2d 841, 843, C. A. 6th.[14]

There is no basis for the Union's fear (Br. 25) that, if Lannom were able to question the validity of Gold's

[14] See also, *Privett* v. *United States*, 256 U. S. 201, 203–204; Rule 65 (d) Federal Rules of Civil Procedure. A further reason militating against *res judicata* is that the District Court merely issued a preliminary injunction. Cf. *United States* v. *United States Smelting, et al.*, 339 U. S. 186, 198–199.

affidavits in this proceeding, so could employers in every unfair labor practice proceeding challenge the veracity of Section 9 (h) affidavits, with the result that such proceedings would be bogged down with these collateral issues. Were this Court to find, contrary to the view of the District of Columbia courts, that the falsity of Section 9 (h) affidavits is relevant to the Board's functioning, the Board would be free to resume its practice of handling these questions in separate administrative proceedings, and thus there would be no occasion for going into these matters in particular unfair labor practice or representation cases. See *Coca-Cola Bottling Co. of Louisville,* 108 N. L. R. B. 490, 491. Nor, as the Union suggests (Br. 25), is this view inconsistent with our contention that *res judicata* principles are inapplicable here. Although such an administrative compliance determination would preclude a party from reopening the compliance question in a subsequent unfair labor practice case, the compliance determination is not *res judicata* as to him, for he is not barred from requesting the Board, on the basis of information not previously considered by it, to conduct a new administrative investigation into the compliance question, and the Board, of course, is free to do so.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.[15]

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National Labor Relations Board.

OCTOBER 1956.

[15] But cf. fn. 8, p. 16, *supra*.

U. S. GOVERNMENT PRINTING OFFICE: 1956

SUPREME COURT OF THE UNITED STATES

No. 40.—October Term, 1956.

Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Etc., Petitioner, *v.* National Labor Relations Board and Lannom Manufacturing Company.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[December 10, 1956.]

Mr. Justice Douglas delivered the opinion of the Court.

This is a companion case to No. 57, *Leedom* v. *International Union, ante*, p. —, decided this day. International Fur and Leather Workers Union [1] filed a charge with the National Labor Relations Board alleging that respondent, Lannom Mfg. Co. had interfered with the rights of its employees guaranteed by the Act. This charge was filed in April 1951. A complaint was issued based on the charges in February 1952. At the hearing Lannom sought to prove that certain § 9 (h) affidavits filed by officers of the union were false. The trial examiner ruled, in accordance with the Board's practice, that that issue could not be litigated in the proceeding. The trial examiner recommended that an appropriate remedial order issue to correct the unfair labor practice which he found to exist. The Board in general sustained the trial examiner and issued a remedial order against Lannom, 103 N. L. R. B. 847. Prior to this order, the Board had been enjoined from taking administrative action requiring the union's officers to reaffirm their § 9 (h) affidavits.

[1] In February 1955 this union merged with Amalgamated Meat Cutters & Butcher Workers of North America, petitioner in this case.

Farmer v. United Electrical Workers, 211 F. 2d 36. Accordingly the Board ruled, "We are administratively satisfied that the Union was in compliance with § 9 (h) at all times relevant hereto." 103 N. L. R. B., p. 847, n. 2.

In August 1953 an indictment was returned against Ben Gold, an officer of the union, charging that the § 9 (h) affidavit which he filed with the Board on August 30, 1950, was false. In 1954 Gold was convicted for that offense.[2] Thereafter, the Board ordered the union to show cause why its compliance status under the Act should not be altered, unless Gold were removed from office. The union re-elected Gold as its president. Shortly thereafter the Board declared the union out of compliance with § 9 (h). 108 N. L. R. B. 1190, 1191. The union then obtained from the District Court for the District of Columbia a preliminary injunction enjoining the Board from altering or restricting the union's compliance status by reason of Gold's conviction. The Court of Appeals affirmed. *Farmer* v. *International Fur & Leather Workers Union*, 221 F. 2d 862.

The Board sought a stay of the preliminary injunction pending decision by the Court of Appeals in the *Farmer* case. When the stay was denied, the Board petitioned the court below, pursuant to § 10 (e) of the Act, for enforcement of the unfair labor practice order. Respondent Lannom Mfg. Co. moved for dismissal of the enforcement petition on the grounds of Gold's conviction for false filing under § 9 (h). The union intervened and opposed the motion to dismiss.

The court below granted the motion to dismiss holding that, since the falsity of the affidavit had been proved, the requirements of § 9 (h) had not been met and no benefits should be accorded the union.

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[2] The judgment of conviction was affirmed by an equally divided Court of Appeals, sitting *en banc*. *Gold* v. *United States*, — F. 2d —. We granted certiorari on October 8, 1956. 352 U. S. 819.

As noted, the complaint in the unfair labor practice proceeding was issued on February 1952, more than twelve months after the affidavit of August 30, 1950. Section 9 (h) provides that no investigation shall be made or complaint issued on behalf of a union unless there is on file with the Board a non-Communist affidavit of each officer "executed contemporaneously or within the preceding twelve-month period." There was no charge against Gold for filing a false affidavit in 1951. The Court of Appeals met that difficulty by presuming that a person who was a Communist in 1950 continued as such through 1951 and through the critical date of February 1952 in absence of evidence showing a change in the factual situation.[3] 226 F. 2d 198–199.

The petitioner has also urged that Gold's conviction for filing a false affidavit could form no basis for holding the union in decompliance prior to the affirmance of Gold's conviction on appeal. At the time of the decision below, Gold's appeal was pending in the Court of Appeals for the District of Columbia. As noted,[4] we have granted certiorari to review the affirmance of his conviction.

For the reasons stated in No. 57, *Leedom* v. *International Union, ante,* p. —, we conclude that the sole sanction of § 9 (h) is the criminal penalty imposed on the officer who files a false affidavit, not decompliance of the union nor the withholding of the benefits of the Act that are granted once the specified officers file their § 9 (h) affidavits. Having so concluded, we find it unnecessary to reach the collateral phases of this controversy.

Reversed.

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[3] It was on this phase of the case that Judge Stewart dissented: "A jury has found that in 1950 Gold was both a Communist and a liar, to put it bluntly. Yet to indulge in the presumption that he was therefore guilty of committing a criminal offense a year later in filing the 1951 affidavit is further than I can go on the record before us." 226 F. 2d, p. 200.

[4] Note 2, *supra.*

SUPREME COURT OF THE UNITED STATES

No. 40.—October Term, 1956.

Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Etc., Petitioner, v. National Labor Relations Board and Lannom Manufacturing Company.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[December 10, 1956.]

Mr. Justice Frankfurter, concurring.

I agree that decompliance of the union is not a sanction authorized by § 9 (h). But this case presents another consideration that cannot be overlooked in the due administration of justice and that, standing alone, would lead me to reverse the judgment of the Court of Appeals. As stated below in the dissenting opinion of Judge Stewart:

> "A court of competent jurisdiction has found that Gold's affidavit of August 30, 1950, was false. The critical date as to compliance with § 9 (h) of the National Labor Relations Act as amended was the date of issuance of the Board's complaint. N. L. R. B. v. Dant, 344 U. S. 375 . . . . If the complaint had issued during the twelve month period while this false affidavit was in effect, the question before us would be clear cut. That, however, is not the case.
>
> "In August of 1951 Gold filed a new non-Communist affidavit, and it was during the effective period of that affidavit that the complaint in this case issued. No court has found that affidavit to be false. It is true that the Board found in 1954 that the Union was not at that time in compliance with § 9 (h).

Assuming the Board had power to make such a finding, and assuming further that it be considered a finding that the 1951 affidavit was false, it must, I should think, be supported, like any Board finding, by substantial evidence, considering the record as a whole. We have no such record before us. Indeed, it appears that the question of the truth or falsity of the 1951 affidavit has never been heard on the merits. [Footnote omitted.]

. . . . .

"A jury has found that in 1950 Gold was both a Communist and a liar, to put it bluntly. Yet to indulge in the presumption that he was therefore guilty of committing a criminal offense a year later in filing the 1951 affidavit is further than I can go on the record before us." 226 F. 2d 194, 199–200.